





# San Francisco Law Library

No. ....

Presented by

.....

---

## EXTRACT FROM BY-LAWS

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. Any party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.



















023  
No. 2795

**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Appellant,

vs.

EBNER GOLD MINING COMPANY, a Corporation, THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, ANGUS MACKEY, as Receiver for THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, and DOWNIE D. MUIR,

Appellees.

**Transcript of Record.**

**VOLUME I.**

(Pages 1 to 384, Inclusive.)

Upon Appeal from the United States District Court for the  
District of Alaska, Division No. 1

**Filed**

**JUL 1 - 1916**

**F. D. Monckton,**

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

**Clerk**





**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

---

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Appellant,

vs.

EBNER GOLD MINING COMPANY, a Corporation, THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, ANGUS MACKEY, as Receiver for THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, and DOWNIE D. MUIR,

Appellees.

---

**Transcript of Record.**

---

**VOLUME I.**

(Pages 1 to 384, Inclusive.)

---

Upon Appeal from the United States District Court for the  
District of Alaska, Division No. 1.

---



# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

## Page

Amended and Supplemental Answer in McFar-	
land vs. Alaska Perseverance Mining Co. . . . .	2332
Amended Complaint . . . . .	62
Amended Complaint in Ebner Gold Mining	
Company vs. Alaska-Juneau Gold Mining	
Company, No. 835-A. . . . .	62
Amended Judgment and Decree . . . . .	132
Amended Judgment and Decree in No. 835-A. . .	132
Answer . . . . .	27
Answer . . . . .	68
Answer in Ebner Gold Mining Company vs.	
Alaska-Juneau Gold Mining Company in	
No. 835-A . . . . .	68
Assignment of Errors . . . . .	2686
Attorneys of Record, Names and Addresses of. .	1
Bond on Appeal . . . . .	2737
Certificate of Clerk, U. S. District Court to	
Transcript of Record . . . . .	2744
Certificate of Stenographer to Transcript of	
Testimony . . . . .	2599
Citation on Appeal . . . . .	2740
Complaint . . . . .	2
Complaint . . . . .	2325
Complaint in McFarland vs. Alaska Persever-	
ance Mining Co. . . . .	2325



ii     *Alaska-Juneau Gold Mining Company vs.*

Index.	Page
Complaint in No. 803-A .....	1963
Complaint in Tripp vs. Alaska-Juneau Gold Mining Co. et al.....	2155
Conclusions of Law .....	2674
Conclusions of Law Requested by Plaintiff....	2639
Decree .....	2678
Decree in McFarland vs. Alaska Perseverance Min. Co.....	2362

EXHIBITS:

Plaintiff's Exhibit—Map Showing Alaska- Juneau and Ebner Properties.....	1934
Plaintiff's Exhibit 2—Photograph .....	1935
Plaintiff's Exhibit 3—Photograph .....	1936
Plaintiff's Exhibit 4—Photograph .....	1937
Plaintiff's Exhibit No. 5—Photograph ....	1938
Plaintiff's Exhibit No. 7—Photograph....	1939
Plaintiff's Exhibit No. 8—Photograph....	1940
Plaintiff's Exhibit No. 9—Photograph....	1941
Plaintiff's Exhibit No. 10—Notice of Alaska-Juneau Gold Mining Co. Re Waters of Gold Creek, etc.....	1943
Plaintiff's Exhibit No. 11—Photograph...1947	
Plaintiff's Exhibit No. 12—Photograph...1948	
Plaintiff's Exhibit No. 13—Photograph...1949	
Plaintiff's Exhibit No. 14—Photograph...1950	
Plaintiff's Exhibit No. 15—Photograph ...1951	
Plaintiff's Exhibit No. 16—Photograph...1952	
Plaintiff's Exhibit No. 17—Letter, Septem- ber 28, 1909, F. W. Bradley to R. A. Kinzie .....	1953

EXHIBITS—Continued:

Plaintiff's Exhibit No. 18—Letter, November 25, 1909, Robert A. Kinzie to F. W. Bradley .....	1953
Plaintiff's Exhibit No. 19—Letter, December 11, 1909, F. W. Bradley to R. A. Kinzie .....	1954
Plaintiff's Exhibit No. 20—Letter, October 28, 1909, F. W. Bradley to R. A. Kinzie .....	1955
Plaintiff's Exhibit No. 21—Letter, October 11, 1909, Robert A. Kinzie to F. W. Bradley .....	1956
Plaintiff's Exhibit No. 22—Letter, November 19, 1909, Louis P. Schackleford to Robert A. Kinzie .....	1957
Plaintiff's Exhibit No. 23—Shipping Tag ..	1959
Plaintiff's Exhibit No. 24—Certified Copy of Notice of L. D. Mulligan Re Appropriation of Waters of Gold Creek, etc.....	1959
Plaintiff's Exhibit No. 25—Assignment of L. D. Mulligan to Alaska-Juneau Gold Mining Company .....	1960
Plaintiff's Exhibit No. 25—Certificate of Notary Public Re Execution of Assignment of L. D. Mulligan to Alaska-Juneau Gold Mining Co.....	1962
Plaintiff's Exhibit No. 26—Complaint in No. 803—A .....	1963

EXHIBITS—Continued:

Plaintiff's Exhibit No. 26—Map of Alaska-Juneau—Flume and Flume Line.....	1970
Plaintiff's Exhibit No. 27—Photograph...	1971
Plaintiff's Exhibit No. 30—Majority Report of Committee of Miners of Harris Mining District Re Amendment to Mining Laws, etc.....	1973
Plaintiff's Exhibit No. 31—Minority Report of Committee of Miners of Harris Mining District Re Amendment of Mining Laws, etc.....	1975
Plaintiff's Exhibit No. 33—Local Mining Laws of Harris Mining District, Alaska .....	1977
Plaintiff's Exhibit No. 34—Local Mining Laws of Harris Mining District, Alaska .....	1988
Plaintiff's Exhibit No. 35—Photograph ...	2001
Plaintiff's Exhibit No. 36—Photograph ...	2000
Plaintiff's Exhibit No. 37—Photograph ..	2002
Plaintiff's Exhibit No. 38—Report of Ebner Gold Min. Company .....	2003
Plaintiff's Exhibit No. 39—Mortgage or Deed of Trust, December 15, 1907, The California-Nevada, Co. to The Standard Trust Co. of New York et al....	2010
Plaintiff's Exhibit No. 40—Oral Opinion in No. 803—A.....	2039
Plaintiff's Exhibit No. 41—Water Locations of Record Made in Harris Min-	



## Index.

Page

## EXHIBITS—Continued:

ing District, District of Alaska, from June 27, 1881, etc., to July—1914. . . . .	2044
Plaintiff's Exhibit No. 42—Notice of Loca- tion of R. S. Lewis . . . . .	2094
Plaintiff's Exhibit No. 43—Notice of Loca- tion of Sam Howarth et al. of Waters on Salmon Creek, etc. . . . .	2096
Plaintiff's Exhibit No. 44—Notice of Anton Marks et al. of Location, etc., of Waters on Nevada Creek . . . . .	2099
Plaintiff's Exhibit No. 45—Notice of J. D. Sagemiller of Location of Water Rights, etc. . . . .	2103
Plaintiff's Exhibit No. 46—Notice of Pat McClinchy et al. of Location of Water Rights, etc. . . . .	2105
Plaintiff's Exhibit No. 47—Notice F. S. Reynolds et al. of Claim of Water of Sheep Creek, etc. . . . .	2108
Plaintiff's Exhibit No. 48—Notice of Luke Noland, of Water Right, etc. . . . .	2110
Plaintiff's Exhibit No. 49—Notice of T. C. Hallum, of Water Right . . . . .	2113
Plaintiff's Exhibit No. 50—Notice of W. H. Hile of Water Right . . . . .	2115
Plaintiff's Exhibit No. 51—Notice of George E. Pilz of Water Right . . . . .	2117
Plaintiff's Exhibit No. 52—Notice of J. W. Price et al. of Water Location . . . . .	2119

**EXHIBITS—Continued:**

Plaintiff's Exhibit No. 53—Notice of L. B. Johnson, of Location of Water Right . .	2121
Plaintiff's Exhibit No. 54—Notice of J. R. Mitchell, Agent, etc., of Location of Right of Way for Location of Water . .	2124
Plaintiff's Exhibit No. 55—Notice of Location of Oscar Ohman, of Right to Water . . . . .	2128
Plaintiff's Exhibit No. 56—Notice of Location of Falis Marchx of Water Right . .	2139
Plaintiff's Exhibit No. 57—Notice of Pissetta Noe, et al., of Claim of Water Right . . . . .	2131
Plaintiff's Exhibit No. 58—Notice of L. D. Mulligan, of Water Right . . . . .	2133
Plaintiff's Exhibit No. 59—Notice of W. R. Lindsay of Water Right . . . . .	2137
Plaintiff's Exhibit No. 60—Notice of The Nowell Gold Mining Co. of Pre-emption of Right of Way and Location of Water . . . . .	2141
Plaintiff's Exhibit No. 61—Notice of Location of Thos. S. Nowell of Pre-emption of Right of Way for Ditch and Location of Water . . . . .	2145
Plaintiff's Exhibit No. 62—Photograph . .	2149
Plaintiff's Exhibit No. 63—Photograph . .	2152
Plaintiff's Exhibit No. 64—Sketch Map of Gold Creek . . . . .	2153

EXHIBITS—Continued:

Plaintiff's Exhibit No. 65—Complaint in No. 804—A .....	2155
Plaintiff's Exhibit No. 66—Topographic Map of Eagle River Region, Alaska...	2159
Defendant's Exhibit "A"—Photograph...	2160
Defendant's Exhibit "B"—Map of Mining Claims .....	2161
Defendant's Exhibit "C"—Location of H. T. Tripp of Water Right .....	2164
Defendant's Exhibit "D"—Letter, October 19, 1909, F. L. Underwood to H. T. Tripp .....	2163
Defendant's Exhibit "E"—Letter, Septem- ber 25, 1909, Wm. M. Ebner to H. T. Tripp .....	2165
Defendant's Exhibit "F"—Letter, Septem- ber 25, 1909, H. T. Tripp to Wm. M. Ebner .....	2164
Defendant's Exhibit "S"—Map of Ebner Properties and Adjacent Claims Near Juneau, Alaska .....	2168
Defendant's Exhibit "T"—Map of Mining Claims .....	2167
Defendant's Exhibit "U"—U. S. Patent Samuel Coulter .....	2171
Defendant's Exhibit "A-2"—Notice of Location of Albert E. Graham.....	2285
Defendant's Exhibit "B-2"—Deed, July 5, 1911, Albert E. Graham to Wm. M. Eb- ner .....	2289



## EXHIBITS—Continued:

Defendant's Exhibit "C-2"—Deed, February 26, 1914, Wm. M. Ebner to Ebner Gold Mining Co.....	2287
Defendant's Exhibit "D-2"—Notice of Wm. M. Ebner of Location of Quartz Claim.....	2291
Defendant's Exhibit "E-2"—Notice of Wm. M. Ebner of Location of Quartz Claim.....	2293
Defendant's Exhibit "F-2"—Deed, March 29, 1906, Wm. M. Ebner to Ebner Gold Mining Co.....	2295
Defendant's Exhibit "G-2"—Deed, March 10, 1909, Alaska-Juneau Gold Mining Co. to Ebner Gold Mining Co.....	2298
Defendant's Exhibit "H-2"—Notice of Location of Ebner Gold Mining Company of Placer Claim.....	2302
Defendant's Exhibit "I-2"—Oral Opinion .....	2306
Defendant's Exhibit "J-2"—Minutes of Meeting of Miners of Harris Mining District, February 12, 1887.....	2321
Defendant's Exhibit "K-2"—Map of Ebner Patented Mining Claims.....	2323
Defendant's Exhibit "L-2"—Complaint in Note 510-A.....	2325
Defendant's Exhibit "M-2"—Amended and Supplemental Answer in 510-A..	2332
Defendant's Exhibit "N-2"—Plaintiff's	

EXHIBITS—Continued:

Amended Reply.....	2341
Defendant's Exhibit "O-2"—Findings of Fact.....	2346
Defendant's Exhibit "P-2"—Decree.....	2361
Defendant's Exhibit "Q-2"—Photograph .....	2366
Defendant's Exhibit "R-2"—List of Loca- tors of Water Rights, etc.....	2367
Defendant's Exhibit "S-2"—Topographic Map of the Juneau Gold Belt, Alaska..	2598
Defendant's Exhibit "B-1"—Testimony of Lloyd Hill, for Defendant.....	2191
Defendant's Exhibit "C-1"—Notice of Ebner Gold Mining Co. of Ownership of Waters of Gold Creek.....	2218
Defendant's Exhibit "D-1"—Notice of Lo- cation of Wm. M. Ebner et al. of Loca- tion of Cape Horn Mill Site.....	2221
Defendant's Exhibit "G-1"—Quitclaim Deed, August 3, 1914, Wm. M. Ebner to Ebner Gold Mining Co.....	2225
Defendant's Exhibit "H-1"—Notice of Lo- cation of Wm. M. Ebner et al. of the Cape Horn Lode.....	2231
Defendant's Exhibit No. "I-1"—Notice of Location of Wm. M. Ebner et al. of Eureka Lode.....	2232
Defendant's Exhibit "J-1"—Deed, July 15, 1896—George Duke to Wm. M. Ebner, etc.....	2234

EXHIBITS—Continued:

Defendant's Exhibit "K-1"—Deed, August 29, 1896, Fred Micho to Wm. M. Ebner .....	2237
Defendant's Exhibit "L-1"—Deed, July 15, 1896, Anna L. Zimmerly to William M. Ebner .....	2240
Defendant's Exhibit "M-1"—Deed, February 18, 1897, Wm. M. Ebner to A. S. Lovett .....	2244
Defendant's Exhibit "N-1"—Deed, February 18, 1897, Wm. M. Ebner to William Power Wilson .....	2246
Defendant's Exhibit "O-1"—Deed, October 5, 1900, Arthur S. Lovett to Anna L. Zimmerly .....	2248
Defendant's Exhibit "P-1"—Deed, William Power Wilson to William M. Ebner .....	2251
Defendant's Exhibit "Q-1"—Forfeiture Notice to Anna L. Zimmerly .....	2254
Defendant's Exhibit "R-1"—Location Notice of Thos. J. McCully .....	2257
Defendant's Exhibit "S-1"—Notice of Location of Thos. J. McCully .....	2259
Defendant's Exhibit "T-1"—Deed, December 13, 1909, Thos. J. McCully et al., to H. T. Tripp .....	2260
Defendant's Exhibit "U-1"—Deed, April 4, 1912, H. T. Tripp to H. W. Hoops ..	2063



## EXHIBITS—Continued:

Defendant's Exhibit "V-1" — Deed, March 10, 1913, Herman W. Hoops to Sidney J. Jennings .....	2267
Defendant's Exhibit "W-1"—Deed, May 21, 1914, Sidney J. Jennings to Ebner Gold Mining Co. ....	2271
Defendant's Exhibit "X-1"—Deed, May 21, 1914, Alaska-Ebner Mines Co. to Ebner Gold Mining Co. ....	2276
Defendant's Exhibit "Y-1" — Location Notice of Wm. M. Ebner .....	2281
Defendant's Exhibit "Z-1" — Quitclaim Mining Deed, January 31, 1913, Wm. M. Ebner to H. W. Martin .....	2282
Findings of Fact .....	2642
Findings of Fact and Conclusions of Law.....	2642
Findings of Fact and Conclusions of Law in No. 835-A .. .....	121
Findings of Fact in McFarland vs. Alaska Per- severance Min. Co. ....	2346
Findings of Fact Requested by Plaintiff.....	2599
Judgment and Decree .....	2678
Judgment and Decree in No. 835-A.....	128
Mandate of U. S. Circuit Court of Appeals....	130
Memorandum Decision .....	159
Motion for Leave to Amend Reply.....	143
Motion to Amend Complaint .....	23
Motion to Amend Reply .....	146
Names and Addresses of Attorneys of Record..	1
Opinion .....	150

Index.	Page
Opinion .....	1617
Opinion in Case No. 803-A .....	2039
Opinion of Lyons, D. J., in Alaska-Juneau Gold Mining Co. vs. California-Nevada Copper Co. ....	2307
Opinion of Lyons, D. J., in Ebner Gold Mining Co. vs. Alaska-Juneau Gold Mining Co., 803-A .....	2316
Oral Opinion .....	2040
Oral Opinion .....	2316
Order Allowing Amendment of Complaint ....	25
Order Allowing Insertion of Matter on Page 4 of Answer in No. 835-A .....	119
Order Allowing Plaintiff to Amend Reply, etc..	150
Order Correcting Name of Party, Defendant..	21
Order Directing Transmission of Original Ex- hibits to Appellate Court .....	2742
Order Dismissing Third Cause of Action of Amended Complaint Without Prejudice in No. 835-A .....	118
Order Granting Leave to Amend Reply .....	144
Order Settling and Allowing Bill of Exceptions.	2676
Petition for an Appeal .....	2683
Plaintiff's Amended Reply in McFarland vs. Alaska Perseverance Min. Co. ....	2341
Praeipce for Transcript of Record.....	2743
Proceedings Had June 22, 1914 .....	160
Reply .....	49
Reply to Answer .....	94

Index.	Page
TESTIMONY ON BEHALF OF PLAIN- TIFF:	
BRADLEY, F. W. ....	352
Cross-examination .....	369
Recross-examination .....	386
Recalled in Rebuttal.....	1628
Cross-examination .....	1645
Redirect Examination .....	1671
BULLARD, BEN (In Rebuttal).....	936
Cross-examination .....	939
CASEY, RUSSELL .....	430
Cross-examination .....	433
Redirect Examination .....	435
Recalled in Rebuttal .....	1573
Cross-examination .....	1574
COLE, CASH .....	460
Cross-examination .....	461
DEMPSEY, JAMES .....	463
Cross-examination .....	465
EARLY, PETER (In Rebuttal) .....	1304
Cross-examination .....	1306
FOX, C. A. (In Rebuttal).....	960
Cross-examination .....	963
Recross-examination .....	972
HARKRADER, GEORGE (In Rebuttal)	909
Cross-examination .....	916
Redirect Examination .....	925
HARRI, O. M. ....	389
Cross-examination .....	401
Redirect Examination .....	423
Recalled in Rebuttal .....	1510

	Index.	Page
TESTIMONY ON BEHALF OF PLAIN-		
TIFF—Continued:		
Cross-examination .....		1513
Redirect Examination .....		1517
HARRIS, WILLIAM (In Rebuttal).....		1042
Cross-examination .....		1049
HEID, JOHN G. (In Rebuttal).....		1467
Cross-examination .....		1472
HELLENTHAL, SIMON (In Rebuttal)...		1612
Cross-examination .....		1614
HENDRICKSON, HENDRICK (In Rebuttal)		
.....		1322
Cross-examination .....		1325
Redirect Examination .....		1328
HILTON, SANDY .....		436
Cross-examination .....		438
HOWE, GEORGE A (In Rebuttal). ....		994
Cross-examination .....		997
HUDSON, MIKE (In Rebuttal).....		973
Cross-examination .....		974
Redirect Examination .....		983
JONES, GEORGE... ..		487
Cross-examination .....		491
KINZIE, R. A.....		176
Cross-examination .....		228
Redirect Examination .....		346
Recalled.....		503
Cross-examination .....		504
Recalled in Rebuttal.....		1517
Cross-examination .....		1536
Redirect Examination .....		1570



TESTIMONY ON BEHALF OF PLAIN-

TIFF—Continued:

Recalled .....	1581
Cross-examination .....	1583
Redirect Examination .....	1587
Recalled in Rejoinder.....	1921
Cross-examination .....	1927
KUNIZ, ARTHUR (In Rebuttal).....	1329
Cross-examination .....	1330
LINDSAY, W. R.....	469
Cross-examination .....	471
Redirect Examination .....	480
Recross-examination .....	482
Recalled—Cross-examination....	484
In Rebuttal .....	852
Recalled in Rebuttal.....	1425
Cross-examination .....	1432
Redirect Examination .....	1454
Recross-examination .....	1455
Redirect Examination .....	1458
Recross-examination .....	1458
LYNN, JAMES .....	424
Cross-examination .....	425
Recalled in Rebuttal.....	1588
Cross-examination .....	1589
MACKEY, ELI (In Rebuttal).....	859
Cross-examination .....	864
Redirect Examination .....	871
MARSHALL, JOHN B. (In Rebuttal)....	872
Recalled in Rebuttal.....	1417
Recalled—Cross-examination.....	1591

	Index.	Page
TESTIMONY ON BEHALF OF PLAIN-		
TIFF—Continued:		
Redirect Examination .....		1602
Recalled in Rebuttal.....		1626
Cross-examination .....		1627
MILLER, GEORGE (In Rebuttal).....		987
Cross-examination .....		989
MOORE, L. A. (In Rebuttal).....		1013
Cross-examination .....		1017
Redirect Examination .....		1029
MULLIGAN, L. D.....		442
Cross-examination .....		445
SIMPSON, F. M.....		467
Cross-examination .....		468
STAATES, HENRY (In Rebuttal).....		1493
Cross-examination .....		1496
STEWART, B. D. (In Rebuttal).....		1345
Cross-examination .....		1355
Redirect Examination .....		1392
Recross-examination .....		1397
STEWART, WILLIAM (In Rebuttal)....		930
Cross-examination .....		933
SUMMERS, F. F.....		440
Cross-examination .....		444
WACHTER, GUS (In Rebuttal).....		1333
Cross-examination .....		1336
WAYLAND, R. G.....		164
Cross-examination .....		165
Redirect Examination .....		174
Recalled—Cross-examination .....		448
Redirect Examination .....		456

TESTIMONY ON BEHALF OF PLAIN-

TIFF—Continued:

Recross-examination ..... 457

Recalled ..... 505

Recalled in Rebuttal ..... 1401

Cross-examination ..... 1405

Redirect Examination ..... 1416

WEBSTER, EDWARD (In Rebuttal).... 1460

Cross-examination ..... 1463

WELLS, CHARLES ..... 879

Cross-examination ..... 892

Redirect Examination ..... 905

Recalled in Rebuttal..... 1291

Cross-examination .... 1291

Redirect Examination ..... 1296

Recross-examination ..... 1298

Redirect Examination ..... 1303

WILSON, AL (In Rebuttal)..... 1315

Cross-examination ..... 1317

WILEY, PERRY (In Rebuttal) ..... 944

Cross-examination ..... 945

Redirect Examination ..... 949

Redirect Examination ..... 956

Recross-examination ..... 958

Redirect Examination ..... 959

TESTIMONY ON BEHALF OF DEFEND-  
ANT:

BLACK, AL ..... 794

Cross-examination ..... 805

Redirect Examination ..... 814

Cross-examination ..... 815

	Index.	Page
<b>TESTIMONY ON BEHALF OF DEFEND-</b>		
<b>ANT—Continued:</b>		
Redirect Examination .....		819
Recalled .....		849
Cross-examination .....		850
<b>CARLSON, JOHN .....</b>		<b>738</b>
Cross-examination .....		746
Redirect Examination .....		770
Recross-examination .....		773
Recalled .....		847
Cross-examination .....		848
Redirect Examination .....		848
Recalled in Surrebuttal .....		1773
Cross-examination .....		1774
<b>EBNER, WILLIAM M. ....</b>		<b>1080</b>
Cross-examination .....		1109
Redirect Examination .....		1124
Recalled .....		1197
Cross-examination .....		1198
Recalled in Surrebuttal.....		1718
Cross-examination.....		1733
Redirect Examination .....		1752
Recalled in Surrebuttal.....		1772
Cross-examination .....		1772
Recalled in Surrebuttal.....		1916
Cross-examination .....		1919
<b>ENICH, JERRY (Recalled in Surrebut-</b>		
<b>tal) .....</b>		<b>1776</b>
Cross-examination .....		1777
Redirect Examination .....		1778



Index.	Page
TESTIMONY ON BEHALF OF DEFEND-	
ANT—Continued:	
GRAHAM, AL . . . . .	773
Cross-examination . . . . .	782
HARRI, OSCAR . . . . .	839
Cross-examination . . . . .	843
JACALEVE, GEORGE . . . . .	828
Cross-examination . . . . .	833
Recalled in Surrebuttal . . . . .	1780
Cross-examination . . . . .	1781
MACKAY, ANGUS . . . . .	693
Cross-examination . . . . .	716
Redirect Examination . . . . .	734
Recross-examination . . . . .	737
Recalled . . . . .	1187
Redirect Examination . . . . .	1196
Recalled in Surrebuttal . . . . .	1764
Cross-examination . . . . .	1768
Recalled in Surrebuttal . . . . .	1771
MARSHALL, JOHN B. . . . .	594
MARTIN, J. T. (In Surrebuttal) . . . . .	1782
Cross-examination . . . . .	1783
MUIR, JR., DOWNIE D. . . . .	1129
Cross-examination . . . . .	1147
Redirect Examination . . . . .	1159
Recross-examination . . . . .	1167
Recalled . . . . .	1203
Cross-examination . . . . .	1205
Recalled in Surrebuttal . . . . .	1787
Cross-examination . . . . .	1796

	Index.	Page
TESTIMONY ON BEHALF OF DEFEND-		
ANT—Continued:		
NOBLE, GEORGE R. ....		1276
Cross-examination .....		1284
Redirect Examination ..		1287
PERELLI, JOHN .....		1288
Cross-examination ....		1290
Recalled in Surrebuttal.....		1756
Cross-examination .....		1759
Redirect Examination .....		1761
Recross-examination .....		1761
RADEL, FRED .....		580
Cross-examination .....		588
Redirect Examination .....		590
Recross-examination .....		591
RIORDAN, DAN .....		821
Cross-examination .....		824
Recalled in Surrebuttal.....		1778
Cross-examination .....		1779
SOINI, JOHN .....		845
TRIPP, HERMAN .....		507
Cross-examination.....		527
Redirect Examination .....		564
Recross-examination .....		567
Redirect Examination .....		572
Recross-examination .....		573
Recalled in Surrebuttal.....		1754
Cross-examination .....		1755
VAN WINKLE, L. E. (In Surrebuttal)...		1807
WAGNER, JOHN (In Surrebuttal).....		1763

Index.	Page
TESTIMONY ON BEHALF OF DEFEND-	
ANT—Continued:	
WETTRICK, F. J. ....	598
Cross-examination .....	653
Redirect Examination .....	687
Recross-examination .....	692
Recalled .....	1058
Cross-examination .....	1067
Recalled.....	1174
Cross-examination .....	1184
Recalled in Surrebuttal .....	1680
Cross-examination .....	1688
Redirect Examination .....	1716
In Surrebuttal .....	1908
Recalled in Surrebuttal .....	1920
Recalled in Surrejoinder.....	1931
Cross-examination .....	1933
WINN, J. R. ....	1218
Cross-examination .....	1226
Redirect Examination ....	1265
Recross-examination .....	1275
Recalled in Surrebuttal .....	1801
Cross-examination .....	1804





*In the District Court for the District of Alaska, Division Number One.*

No. 1074-A.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Plaintiff in Error,

vs.

THE EBNER GOLD MINING COMPANY, a Corporation, THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, ANGUS MACKEY, as Receiver of the ALASKA-EBNER GOLD MINES COMPANY and DOWNIE D. MUIR,

Defendants in Error.

**Names and Addresses of Attorneys of Record.**

HELLENTHAL & HELLENTHAL, Juneau,  
Alaska,

Attorneys for Plaintiff in Error.

WINN & BURTON, Juneau, Alaska,

Attorneys for Defendants in Error.

*In the District Court for the Territory of Alaska,  
Division No. One, at Juneau.*

#1074-A.

THE ALASKA-JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE EBNER GOLD MINING COMPANY, a Cor-  
poration, THE ALASKA-EBNER GOLD  
MINES COMPANY, a Corporation, ANGUS  
MACKEY, as Receiver of the ALASKA-  
EBNER GOLD MINES COMPANY and  
DOWNIE D. MUIR,

Defendants.

**Complaint.**

The plaintiff complains of the defendants and  
alleges:

I.

That the plaintiff is a corporation duly organized  
and existing under and by virtue of the laws of West  
Virginia and doing business in the Territory of  
Alaska with its principal place of business at Ju-  
neau; that the plaintiff has paid the license fee for  
the year 1913 and the annual license due January 1,  
1914, for the year 1914, as provided for by chapter  
eleven (11) of the 1913 Session Laws of the Territory  
of Alaska, and is authorized to sue in the Territory  
of Alaska.

II.

That the defendant, Ebner Gold Mining Company,

is a corporation duly organized and existing and doing business in the Territory of Alaska.

### III.

That the defendant, Alaska-Ebner Gold Mines Company [\*1] is a corporation duly organized and existing and doing business in the Territory of Alaska.

### IV.

That the defendant, Angus Mackey, was duly and regularly appointed, on the 29th day of June, 1912, by an order of this Court made and entered in the case of Valdemar T. Hammer, plaintiff, vs. Alaska-Ebner Gold Mines Company, defendant, an action then pending in this court as case No. 928-A, as receiver for the Alaska-Ebner Gold Mines Company, and did on the first day of July, 1912, take his oath of office, and in all respects duly qualify as such receiver, and is now the duly acting and qualified receiver for the Alaska-Ebner Gold Mines Company; and that leave of Court has been duly obtained to sue him as such receiver.

### V.

That Gold Creek is a natural stream of water, having its source in the mountains situate above Silver Bow Basin, a few miles easterly from the town of Juneau, Alaska, from whence it flows through a series of basins and canyons in a westerly direction into Gastineau Channel, an arm of the Pacific Ocean, collecting the waters of various small streams and tributaries along its course.

---

\*Page-number appearing at foot of page of original certified Record.

## VI.

That on the first day of August, 1910, the waters of Gold Creek were flowing in their natural channel, unappropriated, unused, and unclaimed, at the point of the diversion and appropriation hereinafter more particularly [2] designated; that on the said first day of August, 1910, while the said waters of Gold Creek were flowing in the natural channel, as aforesaid, one L. D. Mulligan, who was acting in that behalf, as the agent and employee and representative of the plaintiff corporation, the necessary preliminary surveys and observations having been made, located, claimed and appropriated twenty thousand (20,000) miner's inches of the waters so flowing in Gold Creek, at the point of diversion hereinafter referred to: Said waters so appropriated to be used in connection with the mining and milling of ores from the plaintiff's mine in the manner hereinafter more specifically alleged; and did then and there, acting for and on behalf of plaintiff as aforesaid, post a notice on the right-hand bank of Gold Creek, going up stream, at a point near where the dam of the plaintiff has since been constructed and is now maintained, the same being approximately one mile easterly and up stream from the town of Juneau, and a short distance up stream from the portal of the Alaska-Juneau Gold Creek tunnel, situate on the Colorado lode mining claim, which said notice of appropriation is in words and figures as follows, to wit:

KNOW ALL MEN BY THESE PRESENTS:  
That, I, L. D. Mulligan, of Alaska, a citizen of the United States, and over the age of twenty-one years,



have appropriated and claimed 20,000 miner's inches, of the water of Gold Creek, near Juneau, Alaska, to be used for mining, milling and other purposes.

Said water to be diverted from said creek at a point indicated by this notice posted on a tree, [3] and about one mile from the mouth of said Gold Creek.

Said water is to be diverted by ditch, pipe and flume.

(Signed) L. D. MULLIGAN.

Dated Aug. 1st, 1910.

Which said above notice was on the 8th day of August, 1910, duly and regularly recorded in the office of the recorder for the Juneau Recording District, which said Recording District embraces the territory through which Gold Creek flows.

## VII.

That the said L. D. Mulligan affixed his own name to said notice of appropriation (whereas he was, in truth and in fact, acting as agent and representative of the plaintiff in that behalf); whereupon the said L. D. Mulligan, in order to place the legal and record title, to the rights acquired by him, in the plaintiff, made, executed and delivered to the plaintiff, on the 2d day of August, 1910, his certain deed, conveying to the plaintiff all his right, title and interest, in and to the rights acquired under and by virtue of the steps taken by him as aforesaid.

## VIII.

That thereafter and on the 8th day of May, 1911, the plaintiff posted an amended notice of appropriation at or near the point of diversion hereinafter

more particularly designated and described, which said amended notice of appropriation is in words and figures as follows, to wit: [4]

NOTICE IS HEREBY GIVEN, that, whereas, the Alaska-Juneau Gold Mining Company did, by its agent, L. D. Mulligan, *posting* a notice claiming and appropriating 20,000 inches of water from the waters flowing in Gold Creek, which notice is in words and figures as follows:

“KNOW ALL MEN BY THESE PRESENTS: That I, L. D. Mulligan, of Alaska, a citizen of the United States and over the age of twenty-one years, have appropriated and claimed 20,000 miner’s inches, of the water of Gold Creek, near Juneau, Alaska, to be used for mining, milling and other purposes.

Said water to be diverted from said creek at a point indicated in this notice, posted on a tree and about one mile from the mouth of said Gold Creek.

Said water is to be diverted by ditch, pipe and flume.

L. D. MULLIGAN.

Dated Aug. 1st., 1910.”

And, whereas, the said L. D. Mulligan acted as the agent of the undersigned in this connection, who is now the owner and holder of said right so located by said Mulligan by virtue of such agency and by *by* virtue of conveyances from said Mulligan:

Now, therefore, the undersigned, not waiving any of its rights or abandoning any of the rights belonging to it under and by virtue of said above-described notice and the work of diverting the water of Gold Creek appropriated by reason thereof, and done pur-

suant thereto, but for the purpose of giving a more accurate and detailed description of the beneficial uses to which said water is to be put and the place and places where the same is to be used when diverted and applied under the aforesaid notice, and of the means whereby the same is to be conveyed to such place of intended use, hereby posts and records this additional and amended notice of appropriation of water, and gives notice to all persons whatsoever that it claims and appropriates under and by virtue of such original notice as well as this amended notice 20,000 miner's inches of the waters of Gold Creek measured under a four-inch pressure for mining, milling, power and other beneficial uses, to be diverted from said creek at a point at or near the place where this notice is posted, the same being posted on the banks of Gold Creek about one mile and one-eighth ( $1/8$ ) above the town of Juneau about 500 feet below the Ebner mill and about 1250 feet above the Jualpa Dam and immediately at the point where the dam of the Alaska-Juneau Gold Mining Company has been constructed and where the water is diverted under the above mentioned location notice, signed by L. D. Mulligan. [5] The water so appropriated and claimed under said notice of L. D. Mulligan and hereunder is to be diverted from Gold Creek at that point, and conveyed by means of pipes, flumes, ditches and other means of conveyance, along a proposed route running above the southerly side of the Last Chance Basin and thence around Swede Hill to a point at or near Jorgenson sawmill, on the shore of Gastineau Channel, where the same is to be applied and used for the

purpose of generating power and for other purposes to be used in connection with the operation of a stamp-mill at or near that point, and a portion of the water so diverted and appropriated is to be used at a point on the Colorado claim near Snow Slide Gulch for the purpose of driving a compressor plant at that point and for the purpose of generating power at that point; and these waters so used on said Colorado claim will be conveyed by a pipe, flume and ditch along the route above indicated and taken from said pipe, flume and ditch to the extent so necessary, at said last mentioned place, if used for the purpose of furnishing power at that point as above stated. The remainder of the waters carried, not used at this point at any time, to be applied in connection with the operation of the stamp-mill to be built near the Jorgenson sawmill as above stated.

NOTICE IS EXPRESSLY GIVEN, that the undersigned has not abandoned or waived any of the rights acquired under and by virtue of the notice of said L. D. Mulligan or by virtue of any of the work that it has heretofore performed looking towards the diversion and appropriation of the waters of Gold Creek or any other right or rights whatsoever it has at this present time to the waters of said creek.

Posted on the ground this 8 day of May, 1911.

ALASKA-JUNEAU GOLD MINING  
COMPANY.

By ROBT. A. KINZIE,  
Agent and General Superintendent."

The above amended notice of location was on the 8th day of May, 1911, duly and regularly recorded



in the office of the recorder for the Juneau Recording District, the same being the Recording District embracing the territory through which Gold Creek flows. [6]

### IX.

That on the first day of August, 1910, the plaintiff actively commenced work looking towards the diversion, appropriation and application to use of the waters of Gold Creek, referred to in the above notice of appropriation, and did, from and after said first day of August, 1910, continue said work with due diligence and without cessation or delay and did in that connection construct a flume grade and flume line from the point of diversion to a point on the Colorado lode mining claim and thence to another point on the plaintiff's millsite, situate on the shore of Gastineau Channel near what is locally known as the Jorgenson sawmill, the said points to which said flume grade and flume line were thus constructed, being the places of intended use;

That the route of said flume line extends along the hillside from the point of diversion for a short distance to the portal of a tunnel six hundred and eighty (680) feet in length, driven for use in this connection; thence through said tunnel and along the hillside above Jualpa Basin a distance of 3,183 feet until it reaches the portal of the Alaska-Juneau #3 Tunnel through which it passes for a distance of about 2400 feet to a point on the Gastineau side of Mount Roberts, from whence the flume line extends along the said Gastineau side of Mount Roberts to the plaintiff's millsite;

That the work carried on in connection with the driving of said tunnel, the grading of said flume grade and the construction of said flume was carried on diligently and without cessation or delay from the time that said [7] work was commenced on August 1, 1910, until the same was fully completed at a cost of approximately seventy-four thousand one hundred thirty-one 09/100 (\$74,-131.09);

That on October 3, 1910, the work done as above stated, looking toward the diversion and the application of the water being appropriated, had been carried on to such an extent that a dam had been construed across Gold Creek at the point of intended diversion, the same being the point where the plaintiff's dam is now maintained, and the waters of Gold Creek, to the extent of approximately five thousand (5,000) miner's inches, diverted from the natural channel of the creek; and that on or about the 17th day of November, 1910, the work above referred to had been carried on to a sufficient extent to enable the plaintiff to convey the water, so diverted, from the point of diversion aforesaid to a point on the Colorado claim so as to apply the same in connection with the operation of a compressor plant there situated, used to furnish power and compressed air for use in connection with the plaintiff's mining operations, and the said waters of Gold Creek, diverted as aforesaid, were then and there conveyed through the flume constructed as aforesaid and applied to use in connection with the driving of said compressor, it being one of the bene-

ficial uses designed; and have been so diverted, conveyed and applied, at all times since, except that a portion of the waters so diverted and conveyed were during the summer of 1913 conveyed to and applied upon plaintiff's millsite, as hereinafter stated, until the waters of Gold Creek were wrongfully diverted [8] by the defendants as herein complained of and the plaintiff deprived of the use thereof.

That in the month of July, 1913, the flume and flume line, above referred to, had been completed the entire distance to the plaintiff's millsite above described, and the waters diverted from Gold Creek as aforesaid were then, to wit, in the month of July, 1913, conveyed through said flume line so constructed, to and upon the plaintiff's said millsite, where the same were then and there applied to use in connection with plaintiff's mining and milling operations there carried on.

X.

That at all times herein mentioned the plaintiff was, and still is, the owner of a large group of mining claims and millsites, situate a short distance to the east of the city of Juneau, in the Territory of Alaska, which said group of mining claims and millsites comprise what is locally known and generally referred to as the Alaska-Juneau mine;

That a vein containing large deposits of low-grade gold-bearing ore occurs on the plaintiff's said group of mining claims, which said deposits have been mined on a small scale for more than twenty years.

That in the year 1899, a general plan was adopted by the plaintiff corporation with a view of opening

up, developing and operating its said mines on a large scale, and work was then and there actively commenced to carry this plan into effect. The plan so adopted provided for the opening up of the ore bodies in the mine itself, the [9] testing and sampling of the ores, the driving of a tunnel, so driven as to connect the mine workings with a point on the Colorado claim above described, the construction of a tram and railway through said tunnel, and the construction of a tram and flume line from thence to the shores of Gastineau Channel, the construction of a large milling plant at said last-mentioned point and the appropriation of the waters of Gold Creek to be diverted and applied in the manner above detailed.

That the work so commenced in the year 1899 has ever since been carried on with the highest degree of diligence and has resulted in the opening up of what are believed to be the largest deposits of gold-bearing ore ever discovered; in the completion of the contemplated tunnel driven a distance of 6,538 feet so as to connect the workings in the plaintiff's mine with the point on the Colorado lode claim above indicated, as well as the completion of four other tunnels, made necessary to furnish a route for the plaintiff's tram and flume line; the construction of a tram line extending from the plaintiff's mine workings through the tunnel to the portal thereof on the Colorado lode claim; and thence along the route indicated to the plaintiff's millsite; the construction of the flume and flume line and the diversion and appropriation of the waters as above



stated; the construction of wharves, warehouses, tramways, ore bins, rock-houses and numerous other buildings and appliances forming a part of a milling plant having a capacity of twelve thousand (12,000) tons per day, which is now in course of construction on the plaintiff's millsites, situate on the shore of Gastineau Channel, near the Jorgenson sawmill, as above [10] indicated;

That a portion of said milling plant, containing forty (40) stamps, is now practically completed and ready for use and the remaining portion of said milling plant is now being pressed to completion with all possible speed.

That in addition to the tunnels and tram line above referred to an additional and further tunnel is now being driven commencing at approximate sea level on the plaintiff's said millsite and extending in an easterly direction to connect with the workings of the plaintiff's mines near Silver Bow Basin in order to furnish an additional route for a tram line to use in connection with the transportation of ores from the plaintiff's said mines to the plaintiff's said milling plant; two tram lines being necessary to transport twelve thousand (12,000) tons of ore daily from the mines to the milling plant, which will, when completed, have a milling capacity of twelve thousand tons.

In addition to this the plaintiff has supplied itself with locomotives, cars and all other necessary appliances to operate its forty stamps already installed and to convey the necessary ores from the mine to its said mill, and will commence the opera-

tion of said mill as soon as an uprise, now being made from the face of its Gold Creek tunnel above described to the surface, has been completed and the necessary drifts have been completed to open up the stopes and permit the extraction of the ore therefrom.

## XI.

That on or about the 17th day of December, 1913, the [11] defendants wrongfully diverted all the waters flowing in Gold Creek at a point approximately three-fourths of a mile above the plaintiff's dam and intake, without restoring the same to their natural channel, until the same were carried a great distance below the plaintiff's said dam and intake, and did thereby prevent the waters flowing in Gold Creek from reaching the plaintiff's said dam and intake, and have ever since continued to so wrongfully divert said water and prevent the same from reaching the plaintiff's said dam and intake, and are still continuing so to do.

That by reason of the said acts of the defendants, the plaintiff is wholly deprived of all the water flowing in Gold Creek, appropriated by it as aforesaid, and is prevented from using the same or any part thereof;

That the defendants threaten to, and will, continue to so wrongfully divert and convey said water beyond the plaintiff's intake and to so deprive the plaintiff of the same and of the use thereof, unless prevented by an injunction issued by this Honorable Court.

## XII.

That at the time the water was so wrongfully diverted by the defendants, the plaintiff was applying the same, and the whole and every part thereof, to use in connection with the driving of its compressor plant, situate on the Colorado claim as aforesaid, and the plaintiff did then and there require the use of said water, and the whole thereof, in that connection, and has ever since required the same and still does so require it.

And further that the plaintiff now is and at all times hereafter will be in position to apply all the waters appropriated by it as aforesaid to use in connection with its mining and milling operations, herein elsewhere referred to, the same being the beneficial use designed at the time the appropriation was made, and will require at all times in the future the water appropriated by it as aforesaid and the whole thereof in order to carry on its said mining and milling operations. [12]

That the plaintiff has not sufficient power available from other sources to operate its said compressor plant, which furnishes compressed air for use in connection with the making of its upraise hereinabove referred to, and the driving of its drifts, tunnels and other openings necessary to open up its stopes; so that the plaintiff cannot carry on this work unless it is restored to the use of the water from which it is being wrongfully deprived by the defendants.

That since the diversion of the water by the defendants, as above stated, the plaintiff has been

carrying on this work to a limited extent, that is to say, it has carried on its work in connection with the making of its upraise, but has been unable to carry on any of the work, necessary in connection with the opening up of its stopes, due to the lack of power and compressed air;

That since the diversion of the water by the defendants, the air used in the making of its upraise is supplied in part by running one side of the compressor by means of an electric motor, there installed, having a capacity large enough to drive one side of the compressor only, and in part by conveying compressed air to its said mine workings from a compressor plant, situate on its millsite on the shore of Gastineau Channel.

And further that the air supplied from the two sources above stated is sufficient only to enable the plaintiff to carry on part of its operations, that is to say, it has enabled the plaintiff to carry on the making of its upraise, but has compelled it to abandon and cease work in connection with the opening up of its stopes until the additional supply [13] of compressed air can be obtained;

And in this connection the plaintiff further avers that it will be unable to supply any of the compressed air, generated at the Gastineau Channel compressor plant in connection with mine operations in its mines, as above stated, in the future without abandoning work not only in connection with the driving of its sea level tunnel, but also in connection with its work of mill construction, now being carried on, on its millsite; for the reason that



all the air coming from the said compressor plant, situate on the millsite, is necessary for use in connection with the driving of its said sea level tunnel and in connection with the driving of the machinery necessary to carry on its construction work, such as riveting hammers, power drills, cooking tools and other like appliances.

That it is necessary to continue work on said sea level tunnel in order that the same may be driven by the time that the milling plant, in course of construction, is completed, this, in order to furnish the mill with the necessary ore to keep it in operation.

And further that the plaintiff has made extensive preparations, involving the outlay of vast sums of money, aggregating approximately three million dollars, looking towards the construction and completion of its said milling plant; that this construction work cannot be carried on it if the plaintiff is deprived of the use of the compressed air, compressed at the compressor plant, situate on the millsite, which said compressed air is now being conveyed to its said Silver Bow Basin Mines, in order to [14] supply power at that point to be used in lieu of the power from which it has been deprived by the wrongful acts of the defendants above stated.

In this connection the plaintiff further avers that if it is restored to the use of the water from which it has been wrongfully deprived, as above stated, it will be enabled to complete its upraise and open up its stopes, so as to commence the operation of the forty-stamp mill now practically completed,



on about the 15th day of February, 1914, and further that as soon as said work of making said up-raise and opening up of said stopes is completed, the forty stamps now installed will be set in operation and the use of the water appropriated by the plaintiff as aforesaid will be necessary in order to supply compressed air and power for use in connection with the mining of the ores to be milled in said mill, so set in operation as well as for the purpose of furnishing power and battery water and for other use in connection with the operation of said mill and that if the plaintiff is deprived of said power it will be unable to supply its said mill with ore and unable either to set the same in operation or keep the same in operation when started;

That plaintiff has not sufficient power available from other sources and is unable to procure sufficient power from other sources to operate its drills and other appliances necessary for the mining of its said ores to be milled in its said mill, when set in operation; and that for the reasons stated the date on which said mill will be set in operation will be indefinitely postponed, unless the Court enjoins the defendants from continuing the wrongful diversion herein complained of. [15] In this connection the plaintiff further avers: That a portion of its said mill, to wit, one half of its capacity, will be employed by the plaintiff in the making of experiments in connection with the treatment of the ores mined, and that these experiments are necessary in order to furnish it with the necessary information

to work out the details of the milling plant, now under construction by it.

That unless the Court issue its temporary order enjoining the defendants from diverting the waters as aforesaid, and depriving the plaintiff of the use thereof, the plaintiff's operations, in connection with the completion of its upraise and opening of its stopes, will be delayed and hampered, the starting of its forty-stamp mill will be postponed and it will be prevented from making the experiments in connection with the treatment of the ores, which it contemplates making, and which will furnish it with information absolutely essential in determining upon and completing the details of its said large twelve thousand (12,000) ton milling plant, now in course of construction; that this would not only prevent the plaintiff from making the profits resulting from the mining and milling of the ores, but would delay in carrying on its construction work, by depriving it of such information as is absolutely essential, and which it would obtain from the operation of the forty-stamp mill, now practically completed.

That none of the injuries thus resulting to the plaintiff, can be compensated for in damages, that the same is such that money value cannot be calculated, and such that the resulting damages are wholly speculative, so that an action at law would give the plaintiff no relief whatever.

That one of the defendants The Alaska-Ebner Gold [16] Mines Company is insolvent;

That the trespass herein complained of is con-

tinuous in its nature and is such that the same will, unless enjoined, ripen into an adverse right and would give rise to a multiplicity of suits in which the damages sustained can not be calculated in money and in which it would be impossible to award the plaintiff compensation in damages.

That the plaintiff has no speedy or adequate remedy at law.

WHEREFORE the plaintiff prays for an injunction *pendente lite* enjoining the defendants, and each of them, from diverting the waters of Gold Creek, or any part thereof, and from in any wise interfering with the same so as to interfere with the use thereof by the plaintiff, and that the defendants, and each of them, be enjoined from doing or committing any of the acts herein complained of; and further that upon the trial of this cause the temporary injunction, so issued, be made permanent and the defendants, and each of them, be permanently enjoined from diverting any of the waters of Gold Creek appropriated by the plaintiff as aforesaid, and from in any wise interfering with the plaintiff's uninterrupted use of said waters; and for such other and further relief as to the Court may seem just and equitable, as well as for its costs and disbursements in this behalf incurred.

HELLENTHAL & HELLENTHAL,

Attorneys for Plaintiff. [17]

United States of America,  
Territory of Alaska,—ss.

Robt. A. Kinzie, being first duly sworn, on oath, says: That I am the general superintendent of the

plaintiff corporation in the above-entitled action; that I have read the foregoing Complaint and know the contents thereof and believe the same to be true.

ROBT. A. KINZIE.

Subscribed and sworn to before me this 7th day of January, A. D. 1914.

[Notarial Seal]      SIMON HELLENTHAL,  
Notary Public for Alaska.

My Commission expires Nov. 30, 1917.

Filed in the District Court, District of Alaska, First Division, Jan. 7, 1914. J. W. Bell, Clerk. By H. Malone, Deputy.

[Endorsements]: Original No. 1074-A. In the District Court for the Territory of Alaska, Division No. 1. The Alaska-Juneau Gold Mining Company, a Corporation, Plaintiff vs. The Ebner Gold Mining Company et al, Defendants. Complaint. Hellen-thal & Hellenthal Attorneys for Plaintiff. Office: Juneau, Alaska. [18]

---

**Order Correcting Name of Party Defendant.**

*In the District Court for the Territory of Alaska,  
Division No. One, at Juneau.*

THE ALASKA-JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE EBNER GOLD MINING COMPANY, a  
Corporation, THE ALASKA-EBNER GOLD



Mines Company, a Corporation, ANGUS  
MACKEY, as Receiver for the ALASKA-  
EBNER GOLD MINES COMPANY and  
DOWNIE D. MUIR,

Defendants.

This matter coming on for hearing, upon plaintiff's motion asking that the name, Alaska-Ebner Gold Mining Company, wherever the same occurs in the complaint herein, be corrected, by interlineation by the clerk, and be made to read, "The Alaska-Ebner Gold Mines Company," wherever the same occurs in caption and the body of the complaint herein, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the clerk change by interlineation the name Alaska-Ebner Gold Mining Company, wherever the same occurs in the complaint, including the caption of said complaint, to "The Alaska-Ebner Gold Mines Company."

Ordered this 10th day of January, A. D. 1914.

ROBERT W. JENNINGS,  
Judge.

ENTERED Court Journal No. J, page 263.

Filed in the District Court, District of Alaska,  
First Division. Jan. 10, 1914. J. W. Bell, Clerk.  
By ———, Deputy.

[Endorsed]: Original No. ——. In the District Court for the Territory of Alaska, Division No. 1, The Alaska-Juneau Gold Mining Company, a Corporation, Plaintiff vs. The Ebner Gold Mining Company, a Corporation, et al., Defendants. Motion.

Hellenthal & Hellenthal, Attorneys for Plaintiff.  
Office: Juneau, Alaska. [19]

---

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1074-A.

THE ALASKA-JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE EBNER GOLD MINING COMPANY, a  
Corporation, THE ALASKA-EBNER GOLD  
MINES COMPANY, a Corporation, ANGUS  
MACKEY, as Receiver for the ALASKA-  
EBNER GOLD MINES COMPANY and  
DOWNIE D. MUIR,

Defendants.

**Motion to Amend Complaint.**

Comes now the plaintiff and respectfully represents that no answer has yet been filed herein and asks leave of Court to amend by interlineation the complaint herein in the following manner and to the following extent to wit:

The plaintiff asks to insert in paragraph twelve (12) at the bottom of page twelve (12) the following: "And further that the plaintiff now is and at all times hereafter will be in position to apply all the waters appropriated by it as aforesaid to use in connection with its mining and milling operations, herein elsewhere referred to, the same being the beneficial use designed at the time the appropriation

24     *Alaska-Juneau Gold Mining Company vs.*

was made, and will require at all times in the future the water appropriated by it as aforesaid and the whole thereof in order to carry on its said mining and milling operations.”

And further to amend the complaint in paragraph twelve (12) of the complaint by inserting after the word [20] “operation” occurring on the sixteenth (16th) line of page fifteen (15), the following: “as well as for the purpose of furnishing power and battery water and for other use in connection with the operation of said mill.”

HELLENTHAL & HELLENTHAL,  
Attorneys for Plaintiff.

Filed in the District Court, District of Alaska, First Division. Mar. 19, 1914. J. W. Bell, Clerk. By J. J. Clarke, Deputy.

[Endorsed]: Original No. 1074—A. In the District Court for the Territory of Alaska, Division No. 1. The Alaska-Juneau Gold Mining Company, a Corporation, Plaintiff vs. The Ebner Gold Mining Company, et al. Defendants. Motion. Hellenthal & Hellenthal, Attorneys for Plaintiff. Office: Juneau, Alaska, [21]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1074-A.

THE ALASKA-JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE EBNER GOLD MINING COMPANY, a  
Corporation, THE ALASKA-EBNER GOLD  
MINES COMPANY, a Corporation, ANGUS  
MACKEY, as Receiver for the ALASKA-  
EBNER GOLD MINES COMPANY and  
DOWNIE D. MUIR,

Defendants.

**Order Allowing Amendment of Complaint.**

This matter coming on to be heard on the applica-  
tion of the plaintiff to amend, by interlineation,  
and it appearing to the Court that no answer has yet  
been filed herein and that the application of the  
plaintiff in this behalf should be allowed,

IT IS ORDERED that the plaintiff is allowed to  
amend its complaint by interlineation in the follow-  
ing particulars, to wit:

That the plaintiff shall be allowed to interline on  
page twelve (12) following the word "it" occurring  
on the bottom of page twelve (12) by inserting at  
that point the following: "And further that the  
plaintiff now is and at all times hereafter will be in  
position to apply all the waters appropriated by it  
as aforesaid to use in connection with its mining



and milling operations, herein elsewhere referred to, the same being the beneficial use designed at the time the appropriation was made, and will require at all times in the future the water appropriated by it as aforesaid and the whole thereof [22] in order to carry on its said mining and milling operations.”

And further that the plaintiff is allowed to amend its complaint by interlining after the word “operation” occurring in the sixteenth (16th) line on page fifteen (15) the following: “as well as for the purpose of furnishing power and battery water and for other use in connection with the operation of said mill.”

Defendant is allowed ten days from this date within which to plead to said complaint as amended.

Done in open court this 20 day of Mch., 1914.

ROBERT W. JENNINGS,

Judge.

ENTERED Court Journal No. J, Page 407.

Filed in the District Court, District of Alaska, First Division, Mar. 20, 1914. J. W. Bell, Clerk.  
By C. Z. Denny, Deputy.

[Endorsed]: Original No. 1074-A. In the District Court for the Territory of Alaska, Division No. 1. The Alaska-Juneau Gold Mining Company, a Corporation, Plaintiff vs. The Ebner Gold Mining Company, et al., Defendants. Order. Hellenthal & Hellenthal, Attorneys for Plaintiff. Office: Juneau, Alaska. [23]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

No. 1074-A.

THE ALASKA-JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE EBNER GOLD MINING COMPANY, a  
Corporation, THE ALASKA-EBNER GOLD  
MINING COMPANY, a Corporation, AN-  
GUS MACKEY, as Receiver for the  
ALASKA-EBNER GOLD MINING COM-  
PANY and DOWNIE D. MUIR,

Defendants.

**Answer.**

Come now the above-named defendants, and an-  
swering the complaint and amendments thereto, ad-  
mit, deny and allege as follows:

I.

Referring to paragraph I of said complaint, these  
defendants have not knowledge or information suf-  
ficient to form a belief as to the matters, facts and  
allegations therein contained, and therefore deny the  
same and each and every part of said paragraph.

II.

Referring to paragraph IV of said complaint, these  
defendants admit that the said Angus Mackay was,  
on or about the 29th day of June, 1912, appointed  
receiver, as in said paragraph alleged, of the Alaska-  
Ebner Gold Mines Company, and further state in

respect thereto and allege that he took possession and control under said appointment of all of the land and personal property of the defendant, the Ebner Gold Mining [24] Company, the said former corporation having at said time a mortgage either upon the physical property of the Ebner Gold Mining Company, or the capital stock of said company, and said defendant Mackay is still such receiver, and in possession of the property of the Ebner Gold Mining Company as above alleged.

### III.

Referring to paragraph VI, of said complaint, these defendants deny the same and each and every portion thereof.

### IV.

Referring to said paragraph VII of said complaint, these defendants deny the same and each and every allegation therein contained.

### V.

Referring to paragraph VIII of said complaint, these defendants have not knowledge or information sufficient to form a belief as to the matters, facts and allegations contained in said paragraph and therefore deny the same and each and every allegation therein contained.

### VI.

Referring to paragraph IX, of the complaint, these defendants deny the same and each and every allegation therein contained.

### VII.

Referring to paragraph X of said complaint, these defendants deny the same and each and every allega-

tion therein contained, except that the plaintiff is the owner of some mining claims.

VIII.

Referring to paragraphs XI and XII of said complaint, these defendants deny the same and each and every allegation therein contained.

And by way of cross-complaint and affirmative defense, [25] and a further answer to the matters, allegations and things pleaded in the complaint of plaintiff herein, these defendants allege:

I.

That the defendant, the Ebner Gold Mining Company is now, and at all times hereinafter mentioned was, a corporation duly organized and existing under the laws of the Territory of Alaska, and has complied with the laws therein respecting its doing business in said territory, and has paid the license fees for the years 1913 and 1914, as is provided for by chapter II of the Session Laws of 1913, of the Territory of Alaska, and is authorized to sue and maintain suits, actions, and proceedings in said Territory of Alaska.

II.

That said Ebner Gold Mining Company, one of the corporations defendant herein, is now and has for a long time past, and prior to the commencing of this action, been the owner, by location, patenting and mesne conveyancing, of a large number of mining claims and mill sites in Silver Bow Basin, near Juneau, Alaska, a number of which said mining claims lie along side of and abut upon some of the mining claims which the plaintiff company sets



out and refers to in its complaint herein as owned by it; that said mining claims of said defendant company carry and contain gold in great value in the form of a low grade milling ore; that through these mining claims, amounting in number about thirty, there flows a creek or stream of water known as Gold Creek, being the same creek described and referred to in plaintiff's complaint herein; that said creek is a mountain stream with considerable fall and rapids, and at certain seasons of the year carries quite a large volume of water. At other seasons, on account of cold weather, [26] the water is diminished therein to somewhat of a small flow, not containing water at said times sufficient for the use of the said Ebner Gold Mining Company in the opening up, developing mining and milling ore which said company extracts from its said mines, as is more particularly hereinafter set forth; that for more than 20 years last past, the said Ebner Gold Mining Co. (hereafter to be referred to as the defendant company has been mining and milling the ore from some of its mining claims at the upper end of its group, and, for said purpose, first constructed a 10-stamp quartz mill, and which was thereafter increased to a 15-stamp quartz mill, and in connection therewith had its ore bunkers, air compressor, and all buildings, equipment and machinery necessary for the successful running of said stamp-mill, and treating the ores taken from some of its mining claims, and also in connection with said operations, said defendant company posted water location notices on Gold Creek, and

appropriated and diverted therefrom, on its own property, water which was used in connection with its mining operations for the purpose of generating power for its machinery and treating its ores, and, for the purpose of the application of said water, said defendant company constructed its flume and pipe lines to convey the same to the place of use in, over and upon its own property, and the main flume used for this purpose was of the dimensions of 18 inches by 36 inches; that said company, thus equipped, carried on its mining operations successfully over the period of time mentioned in this paragraph, and also developed and opened up said property, and its ore bodies, by running of tunnels, cross cuts, open cuts and such other work as is generally resorted to in the proving of the value of the ore bearing bodies within the limits of said defendant [27] company's mining property.

#### IV.

The larger the scale upon which ore bearing bodies, of the kind and nature that are within the limits and boundaries of the mining property of said defendant company, are worked the greater profit there is realized from such working and operating the same, and mining, milling and treating the ores taken therefrom; that a long time prior to the year of 1908, the said defendant company and its general manager and president, William M. Ebner, decided upon opening up, working and operating said mines on a larger scale than the said work had been conducted prior to that time, and to that end and purpose it was concluded to drive

a large working tunnel, commencing at the lower end of the said group of mining claims, or on what is known as the Cape Horn No. 2 lode claim and thence extending through said group of claims the entire length to the upper and old workings of the said defendant company, herein referred to, and the building, constructing and equipping a large stamp-mill at or near the mouth or portal of said tunnel and the building and construction of flumes or ditches, and the laying of pipe lines for the purpose of conveying water from Gold Creek from or near the point thereon where the said defendant company had theretofore been diverting its water for its use as herein stated, to its said new mill, which said flume, ditch and pipe line, throughout their entire length, would be upon the property of said company; and to erect such other buildings and install such other machinery necessary to carry out the plans so decided upon as aforesaid. That during the year of 1909 one H. T. Tripp, an experienced mining engineer, was employed to look over, examine [28] and explore said mining property, and to report on the advisability of the plan and scheme of opening up, mining and operating said property, as had been decided upon, as aforesaid, and the said Tripp reported favorably upon said plan, plans or scheme, as aforesaid, and which had been previously decided upon by the said defendant company and the said Ebner; that said Tripp completed his services as aforesaid some time the latter part of June or the first of July, in the year 1910.

## V.

That as early as the year 1880, the miners in the near vicinity of Juneau, Alaska, and in the surrounding country and particularly in Silver Bow Basin, where the mining property and mining claims, described in the complaint herein, and those of the defendant company, and Gold Creek are situated, discovered gold. That ever since said time both quartz and placer mines have been worked and mined more or less in Silver Bow Basin and in Southeastern Alaska, and the country surrounding the town of Juneau, and for the mining of said properties and in connection therewith, water has been appropriated and diverted from streams for said mining and other beneficial uses, and that ever since said date it has been the universal and general rule, practice and custom for any person or corporation desiring to appropriate water for said last above mentioned purposes to post a notice in writing in a conspicuous place at the point of intended diversion, stating the amount of water claimed to be diverted from said creek to be used for beneficial purposes. Said posting of notice, as aforesaid, has always been considered under the said general practice, rule and custom of miners, as the first step and the declaring of the intention of such person or corporation to apply said water to beneficial use. [29] The next step that has been followed under said custom, rule and practice has been the diversion of the water from its natural channel by means of a ditch, canal or other structure, and then the prosecution of the work so as to actually apply the



water to the beneficial use and its application thereto. That while the said H. T. Tripp was engaged in exploring the mining claims belonging to the defendant company for the purpose and in the manner in the last paragraph above stated, and about the time that he had decided upon following out the plans which had been formulated by the defendant company and William M. Ebner for the larger opening up and mining of said property, on the 20th day of June, 1910, acting in behalf of the said defendant company and its successors in interest, did locate, claim and appropriate 10,000 miner's inches of water flowing in Gold Creek at the point of diversion hereinafter referred to, said water so located, claimed and appropriated to be conveyed by ditch, flume or pipe along the banks of Gold Creek to any point on the property of the defendant company and to be used in connection with the mining and milling of the ores from the property and mines of said defendant company; and the said Tripp did, then and there, acting for and on behalf of the said defendant company, or its successors in interest, post a notice in a plain and conspicuous place on the dam in Gold Creek which had theretofore been used by the said defendant company in diverting water from Gold Creek, and turning it in to its 18 or 36-inch flume, and conveying it through the same for the purposes hereinbefore mentioned, in connection with its running its 15-stamp mill, which said dam is located on the patented property of said defendant company and near its 15-stamp mill, which

said [30] notice of appropriation and location of water is in words and figures as follows, to wit:

### NOTICE OF WATER.

Notice is hereby given to all whom it may concern that I the undersigned claim 10 thousand miner's inches of the water flowing in this creek or any part of 10 thousand miner's inches that may be flowing at any season of the year to be conveyed by ditch flume or pipe along the bank of Gold Creek with pipe or *floom* or both to any place on the property known as the Ebner Mine or to carry across or farther than the limits of the said mine property. This location is made on the ground this day and date and is posted at the place known as the Ebner Dam about  $1\frac{3}{4}$  miles up from Juneau, Alaska, on Gold Creek.

Dated this 20th day of June, 1910.

Time 7:30 A. M.

Locator—H. T. TRIPP.

Witness:

JOHN SOINI.

—which said above notice was on the 25 day of Oct., 1910, duly and regularly recorded in the office of the recorder of the Juneau Recording District, which said Recording District embraced the territory through which Gold Creek flows and the place where said notice was posted; that while said H. T. Tripp signed or affixed his own name to said notice, he was in truth and in fact acting as agent and representative of the said defendant company, or its successors in interest, and whatever right has been acquired by reason of the act of said Tripp has been by mesne conveyances, made, executed and delivered, con-

veyed to this defendant company.

## VI.

That on the 17th day of August, 1910, John R. Winn, acting as agent and attorney for the Ebner Gold Mining Company, located, claimed and appropriated all of the water of Gold Creek at a point of diversion hereinafter referred to; that is, all of the water of said creek, if any, in excess of what said corporation was not then entitled to by reason of prior location, use or appropriation or riparian ownership, and which said [31] water was to be used in the working, mining and developing of the said mines of the said defendant company, and milling and treating and reducing ores therefrom, etc.; which said notice was posted in a conspicuous place on the same dam that the Tripp notice was posted, which said dam is on the Crown Point patented lode claim of the said defendant company, and said notice is in words and figures as follows, to wit:

### NOTICE OF WATER LOCATION.

NOTICE IS HEREBY GIVEN that the EBNER GOLD MINING COMPANY, a corporation, are the owners and claim under this Notice all the waters of this creek, Gold Creek, to its entire flow during all seasons and at all time or times, that said corporation is not already entitled to by reason of prior right or prior location or appropriation, or prior right to use or appropriate; that is all the water of said creek, if any, in excess of what said corporation is not now entitled to by reason of prior location, use or appropriation or riparian ownership, to

be conveyed by ditch, flume or pipe or in any other practical or convenient way from said creek and creek bed and to be used in the working, mining, and developing of the mines owned by said Ebner Gold Mining Company, and in milling, treating and reducing the ores taken from said mines of said corporation and for other beneficial and useful purposes.

Said Ebner Gold Mining Company does not intend by this notice to waive any right that it may have to the use of the waters of said creek by reason of it flowing over the mines and mining claims now owned or possessed by it, and does not waive any right of riparian ownership of said water or riparian use of said water flowing over the mines and property owned or possessed by it; nor does not waive any right to the use or any or all of said waters by reason of its or its predecessors in interest prior location, appropriation or use of said water.

This notice is posted on the Ebner Dam on the Crown Point Lode Claim, (patented) U. S. Survey No. 90, and owned by the Ebner Gold Mining Company, the locator herein.

Date of this Notice of Location August 17, 1910.

Posted on the 17th day of August, 1910.

EBNER GOLD MINING CO.

By JNO. R. WINN,

Its Agent and Attorney.

Witnesses:

N. L. BURTON.

WILLIAM WALKER.



That said notice was on the 17 day of August, 1910, duly and regularly recorded in the office of the recorder for the Juneau Recording District at Juneau. Said Gold Creek and the place [32] where said notice was posted is embraced in said recording district.

## VII.

That within a reasonable time after the posting of the said Tripp notice, as aforesaid, and in the months of July and August, 1910, work was actively commenced looking toward opening up and mining said property in the manner herein stated and as had previously been decided upon by the said defendant company, Ebner and Tripp, Timbers, lumber and material were purchased and a 200-stamp mill framed, and most of the machinery bought to equip the same, which said mill was to be erected on the Cape Horn No. 2 lode claim of the said defendant company at or near the portal of the new working tunnel of the defendant company, hereinbefore and hereinafter to be referred to, which is at a point on Gold Creek at the lower end of the large group of claims belonging to said defendant company, and grading on the mill site was commenced. That on or about the last of July or the first of August, 1910, a crew of surveyors was sent upon said property to lay out and survey with accuracy the new tunnel herein referred to, and the new flume line to convey the water from Gold Creek from the point of the old dam where the said Tripp and Winn location notices were posted along the left bank (going up Gold Creek) across the property of the defendant

company to the point on the lower end of the property near where the mill is to be constructed and the portal of said tunnel; that a crew of men was put to work in clearing up the right of way for the construction of the new flume line; that work was continuously and with diligence kept up on said flume line and on the 14th day of September, 1910, the water was diverted from Gold Creek at the defendant company's dam herein referred to through a large open cut made for the purpose of laying [33] the flume and a few days thereafter the flume at that point was constructed and placed in said open cut, which said flume is  $3\frac{1}{2}$  by 4 feet, and the water was kept continuously running through said flume until the same was completed the full length of 4,000 feet to the penstock of said company, which penstock is a short distance from where the foundation was cleared off and partly graded for the new mill to be constructed on the Cape Horn mill site, and said point was reached with said flume and said flume completed on the 15 day of Dec. 1910, as it had been decided upon by the said defendant company, Ebner and Tripp, and as had been laid out and surveyed.

That work was commenced on the new tunnel after it had been laid out and surveyed and decided upon on the — day of —, 1910, and has ever since said time been kept up actively and with diligence, and said tunnel is 8 by 8 feet and had been driven at the time of the commencement of this action 2,600 feet, and in said new workings there is now over 4,000 feet including cross-cuts, drifts and

raises, and four faces are now being advanced.

Before the commencement of this action a large new air compressor plant was erected near the mouth of the new tunnel above referred to and a pipe line laid connecting said air compressor with the penstock at the lower end of the new flume, and in August, 1913, said pipe line was all connected up, the air compressor installed, and water put through the new flume and pipe line and applied to generating power for running said new air compressor and driving said new tunnel, and said water has been so applied to said air compressor ever since said date.

That prior to the commencement of this action, the [34] lumber and materials herein referred to, for the construction of said 200-stamp mill, as well as all of the machinery purchased for the equipment of said mill had been forwarded to Juneau, Alaska, and most of the same hauled from the wharves and the streets of said town to the said Cape Horn mill site, a distance of over one miles from Juneau, and the said defendant company is now engaged in the erection of a mill with said lumber and material upon its Cape Horn mill site, and installing the machinery therein; that the waters of said Gold Creek have been taken therefrom through the new flume in quantities from time to time as it became necessary to apply it to use by this defendant, and as its work, herein referred to, progressed. There has been installed by the defendant company, since the commencement of this action, and there is now being installed, further machinery which is

from time to time requiring additional water, as follows, to wit:

One 15" water-wheel for crusher and pulverizer.

One water-wheel for the generating fan in the tunnel.

Three time as much compressed air is now being used as was at the time of the commencement of this action.

The electric generating unit increased from  $3\frac{3}{4}$  kilowatts to 18 kilowatts.

That all of the water that has been used or is being used by the defendant company, as aforesaid, is necessary for the conducting of its mining enterprises, and has been taken from the mining claims of the defendant company, conducted and conveyed across its mining claims and mill sites, to its point of use and application on its mining claims and mill sites, and then returned to Gold Creek after being used on the mining claims and mill sites of the defendant company.

## VIII.

That at the time that the plaintiff claims that these defendants were wrongfully diverting water from Gold [35] Creek and depriving plaintiff of the use thereof, this defendant was using said water and all of the same that plaintiff was so claiming these defendants were depriving said plaintiff of, and applying the same and the whole thereof in connection with the driving of its new air compressor and purposes herein referred to, and it was necessary for the said defendant company to have said water for said purpose, and it has been necessary



ever since said time for this defendant to have the same, and at all times hereafter this defendant company will require said water and all of the same to be used in connection with its mining and milling operations herein and in this answer referred to, the same being the beneficial use for which said water was located, appropriated and taken up, and the said defendant company will at all times hereafter require such additional water from Gold Creek as will be necessary for carrying on its mining and milling operations as herein stated, and will need all the water of said creek claimed under its locations herein set out, when its plant, referred to herein, is completed, and its mill in full operation. That all of the work done by the defendant company herein referred to, for the purposes herein mentioned of and the application of said water to use has been conducted with diligence and is still being carried on diligently, and will be prosecuted with diligence, there being at this time about 100 men employed in carrying on the work mentioned in this answer and other work opening up and developing said property and making preparations for the mining, milling and treating the ores to soon be taken from said mines; that the mill that is now being erected thereon is of small capacity and intended principally for sampling purposes during the time of opening up the large bodies that are known to exist on said property, and preparatory to building a mill [36] of sufficient capacity in the near future to mine and mill the ores, taken from said property, on a paying basis. When said

larger mill is built, which will be in the near future, it will require a great deal more power, and consequently more water, and the water up to and in excess of the capacity of the present new flume, and Gold Creek is the only present available water power for this defendant company, and, as the ore is to be milled and mined is of a low grade, it has to be treated economically, and for this reason the water power of Gold Creek is of almost incalculable value to this defendant company. That up to the present time there has been expended on said properties of the defendant herein mentioned and on account of the matters herein alleged over the sum of \$——.

## IX.

By reason of the facts contained and set forth in this answer, the defendant, the Ebner Gold Mining Company has the paramount and prior right to all of the water of Gold Creek in this answer claimed, and all of the flow of said creek, by reason of its prior posting and recording of notices and declaration of water rights, as herein set forth, and by reason of its prior notice and intention to divert the water from Gold Creek and apply it to beneficial use, and by reason of the said defendant company's prior diversion of the water from the natural channel of said Gold Creek by means of its ditches and flume lines, all of which were prior to any diversion or appropriation of plaintiff herein, and, further by reason of its diligent prosecution of its work and the actual application of the water of said creek to

beneficial use, and by reason of it being a riparian owner.

### X.

And further answering the said complaint, these [37] defendants allege that if plaintiff ever posted or caused to be posted and recorded any such paper writing as it claims in its answer L. D. Mulligan posted and recorded, said paper writing was posted on the Lotta patented mining claim, and said Lotta mining claim was then and had been for a long time prior thereto and is now *owed* and possessed by the defendant company and said company has been at all times in the open, notorious and exclusive possession thereof, and if such posting was made thereon it was done without the knowledge or consent of this defendant and against its will, and the same was done by plaintiff with the intention of diverting the water from Gold Creek at a point on said claim and conveying it across said claim, and said plaintiff did attempt to convey the water from said point on said claim and across the same, all of which said acts of said plaintiff company were wrong and without the will or consent or knowledge of the defendant company, and constitute a naked, open, malicious and notorious trespass on the property of this defendant company, and any work that was done under said notice or any work or preparations made by the plaintiff looking toward diverting the water from said point and over said claim was of no force or effect as a matter of fact or of law, and can avail the said plaintiff nothing and no rights of plaintiff can be acquired thereby.

And in this connection, and further answer the complaint of plaintiff, these defendants state that the said defendant company at all times mentioned, and for a long time prior to any attempt of the plaintiff company to divert any of the water from Gold Creek, was and now is the owner of what is known as the Parish No. 2 and the Mackay lode mining claims the latter located on June 12, 1911, adjoining the Lotta patented lode mining claim [38] both of which said claims constitute one of the groups of contiguous mining claims which constitute the group of claims of said defendant company referred to herein, and all of the first dam that plaintiff constructed or partly constructed in Gold Creek was on the Lotta patented claim, and said plaintiff attempted to make a diversion of the water at that point but did not succeed, and part of the plaintiff's present dam referred to in its complaint is constructed or was constructed upon the Lotta patented lode claim and part of the same on the said Parish No. 2 lode claim, and there are five or six hundred feet of plaintiff's flume referred to in its complaint constructed upon in and over said Parish No. 2 lode claim, and the entry was made on said property and mining claims while said defendant company was in the open and notorious and sole possession thereof, and was a wrongful entry and was made by force and violence on the part of plaintiff, and was a malicious and naked trespass, and if plaintiff made any diversion of water from Gold Creek by means of any such dams or either of them,



and to any ditch or flume, it was done under the circumstances above mentioned and constitute a naked trespass, and said plaintiff cannot gain any rights thereby, or avail himself of any such action or acts, or diversion thus made.

## XI.

Defendants further allege that should the plaintiff be granted the relief demanded herein, it would take the full flow of water of Gold Creek during part of the year from said creek, conduct it to the shores of Gastineau Channel, a distance of about two miles from its intake, and would thus deprive about two miles of lower creek owners of property and water rights [39] entirely, which is unjust, inequitable and against the law.

## XII.

That Gold Creek, as alleged herein, at certain seasons of the year carries a large volume of water sufficient to fill both plaintiff's flume and defendant's new flume to their full capacity, the said creek being fed by rain and the melting of snow and glaciers. In cold weather, the said creek contains a very small volume of water, and at the time plaintiff commenced its said action herein, and for some time prior and after said time there was not sufficient amount of water in Gold Creek at the defendant company's intake to be of any beneficial use to the plaintiff company for the purpose claimed by said plaintiff, but was of beneficial use to the defendant company on account of the great head there is to the water between defendant's penstock, referred to herein, and its new air compressor, to

which air compressor the water was being applied.

WHEREFORE DEFENDANT'S PRAY,

First. That the complaint of plaintiff be dismissed, and that it go hence without any relief herein whatsoever.

Second. That the defendant, the Ebner Gold Mining Company, a corporation, be adjudged and decreed to be the owner and entitled at all times and all seasons of the year to the entire flow of water of Gold Creek at its dam, and the use of said water for the purpose in this answer stated, and that it be entitled to divert and take from the regular channel of Gold Creek all of said water and convey it by ditches or flumes or pipes, or to convey it in any manner to any place, and to apply it to any beneficial use that said defendant company may elect and to continue the use of the said water of Gold Creek and continue the use of all the water of said Gold Creek that it has heretofore used and divert it and apply it to use [40] in any manner it may elect for any and all beneficial purposes, and that all of the defendants herein be entitled to their costs and disbursements expended and for such other and further relief as to the Court may seem just and equitable in the premises.

WINN & BURTON,

Attorneys for Defendants.

United States of America,  
Territory of Alaska,—ss.

Angus Mackey, being first duly sworn, on oath says, that I am one of the defendants in the fore-

going and above-entitled action and have heard read the *the* foregoing answer and know the contents of the same and believe them to be true.

ANGUS MACKAY,

Subscribed and sworn to before me this 9th day of May, A. D. 1914.

[Notarial Seal]

JNO. R. WINN,

Notary Public in and for Territory of Alaska.

My commission expires June 4, 1914.

Filed in the District Court, District of Alaska, First Division. May 9, 1914. J. W. Bell, Clerk.  
By J. J. Clarke, Deputy.

[Endorsed]: No. 1074-A. In the District Court for the Territory of Alaska, Division No. 1. The Alaska-Juneau Gold Mining Company, a corporation, Plaintiff vs. the Ebner Gold Mining Company, a corporation, the Alaska-Ebner Gold Mining Company, a Corporation, Angus Mackey, as Receiver for the Alaska-Ebner Gold Mining Co. and Downie D. Muir, Defendants. Answer. Winn & Burton, Attorneys for Defendants. Juneau, Alaska. [41]

---

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

No. 1074-A.

THE ALASKA-JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE EBNER GOLD MINING COMPANY, a  
Corporation,     THE ALASKA-EBNER

GOLD MINES COMPANY, a Corporation,  
ANGUS MACKEY, as Receiver for THE  
ALASKA-EBNER GOLD MINES COM-  
PANY, and DOWNIE D. MUIR,

Defendants.

**Reply.**

Comes now the plaintiff and for Reply to the Answer of the defendants herein admits, denies and alleges as follows:

I.

The plaintiff denies each and every allegation in said Answer contained, except in so far as such allegations are either admissions of the allegations contained within the complaint or are hereinafter admitted.

II.

The plaintiff admits that the Ebner Gold Mining Company is the owner of certain mining claims and mill sites, the location of the same and the extent thereof is hereinafter more especially referred to, and the plaintiff also admits that Gold Creek flows across the same, and also that Gold Creek is a mountain stream having considerable fall and containing a number of rapids and that at certain seasons [42] of the year it carries large volumes of water and also that at other seasons the flow is diminished so that there is comparatively little water left in the creek.

III.

Referring to the allegations of paragraph five of the defendant's Answer, the plaintiff admits: That gold was discovered in the localities mentioned in



the year 1880, and also that mining has been carried on in Silver Bow Basin and the surrounding territory ever since the time that gold was so discovered and that during all of said time water has been diverted from the streams and appropriated for use in connection with the conduct of such mining operations. And also that in connection with the appropriation of water for the purpose mentioned, it has been and is the universal and general rule, practice and custom for those desiring to appropriate water to post a notice in writing in a conspicuous place at the point of intended diversion stating, among other things, the amount of water claimed. This, however, under the rule and custom of miners in this district, as it will hereinafter more particularly appear, is but one of the things that such water notice must state, and in this connection the plaintiff further avers:

That gold was first discovered in Alaska about the year 1880.

That some of the mining claims now owned and operated by the plaintiff company were the first quartz locations made in the Territory. That the newly discovered district was named "The Harris Mining District," after its discoverer, Richard [43] Harris. That the topographic and climatic conditions obtaining in Southeastern Alaska, the territory in which the new discovery had been made, were found to be such that the soil was not adapted for agricultural purposes, except that here and there small patches might be found where garden truck and vegetables of such a character that the same did not

require ripening, might be produced. So that the territory in which the newly discovered district lay was suitable only as a place in which to carry on the pursuit of mining. Under these circumstances, the doctrine of riparian rights was found to be wholly inapplicable to the Territory of Alaska and to the conditions obtaining there.

That Gold Creek as well as all and singular the property rights and other things connected therewith to which reference is made in this reply, are situate within the boundaries of the Harris Mining District. That at a meeting of the miners of the Harris Mining District, previously organized and still recognized and existing, held in the year 1882, the miners of said district duly and regularly adopted the following rules with reference to the diversion and appropriation of water:

“Article I. The right to use the running water flowing in a river or stream, or down a canyon or ravine, may be acquired by appropriation.

Article II. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor [44] in interest ceases to use it for such a purpose, the right ceases.

Article III. The person entitled to the use may change the place of diversion, if others are not injured by such change and may extend the ditch, flume, pipe or aqueducts by which the diversion is made to place beyond that where the first use was made.

Article IV. A water appropriation may be turned into the channel of another stream and

mingled with its waters and then reclaimed, but in reclaiming it the water already appropriated by another must not be diminished.

Article V. As between appropriators, the one first in time is the one first in right.

Article VI. A person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein:

First. He claims the water there flowing to the extent of (giving the number) inches, measured under a four-inch pressure.

Second. The purpose for which he claims it, and the place of intended use.

A copy of the notice must within ten (10) days after it is posted be recorded in the books kept by the recorder of the District.

Article VII. Within twenty days, during the working season; after the notice is posted, the claimant must commence the excavations or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted [45] by rain or snow.

Article VIII. By 'completion' it is meant conducting the waters to the place of intended use.

Article IX. By a compliance with the above rules, the claimant's right to the use of the water relates back to the time the notice was posted.

Article X. A failure to comply with such rules deprives the claimant of the right to the use of the

water as against a subsequent claimant who complies therewith.

Article XI. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must after this title takes effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases."

That all and singular the above and foregoing rules and regulations have been and remain in force and have been universally observed by the miners of the Harris Mining District at all times since their adoption and are still being so observed, and are in all respects in full force and effect. That all the things required by the above rules, in connection with the appropriation of water, are also required by the customs of the miners of the Harris Mining District, and under said customs a forfeiture results whenever any of such requirements are not complied with.

#### IV.

Referring further to the allegations contained in paragraph five of the defendant's Answer, in relation to the notice therein referred to as having been posted by one H. T. Tripp, the plaintiff avers:

That it has no knowledge as to whether said Tripp posted said notice, or did not so post it, and therefore denies that [46] the same was posted at the time indicated in the Answer or at all, but in this connection plaintiff further avers: That if said notice was posted at the point mentioned in the manner



indicated in said Answer, that said notice did not comply with the requirements of the miners' rules hereinbefore referred to, in that the place of intended use is not designated in said notice. Further, that the said H. T. Tripp did not comply with the said miners' rules above referred to, in that the notice, which was claimed to have been posted on the twentieth day of June, 1910, was not recorded until the twenty-fifth (25th) day of August, 1910, whereas the said rules require the recording of such water notice within ten (10) days after the same had been posted. And further, that said miners' rules were not complied with in this, that within twenty (20) days during the working season, after the notice was posted, the claimant did not commence the excavation or construction of the works in which he intended to divert the water, as required by said rules and in this connection, it is averred that the months of June, July and August are and constitute a part of the working season. That because of each of the failures to comply with the miners' rules, as above stated, the right of the claimant did not and could not under the rules relate back to the time the notice was posted. That because of the failures, and each of such failures, to comply with such rules, the claimant was and is deprived, under the rules, above referred to, of the right to the use of the water sought to be appropriated and any and all rights, that the original claimant or his successors may have had, have been forfeited as against the plaintiff, who has in all respects complied with the above and foregoing rules in making [47] its ap-

appropriation of water as detailed in the complaint herein.

## V.

Referring to paragraph six (6) of the defendant's Answer, the plaintiff admits that on or about the 17th day of August, 1910, John R. Winn, acting as agent and attorney for the Ebner Gold Mining Company, posted the notice set up in paragraph six. In relation to the last-mentioned notice, however, the plaintiff avers that said notice does not comply with the provisions of Article Six of the miners' rules hereinbefore above set forth in that the place of intended use is not designated in said notice and further in that the quantity of water claimed is not designated in miners' inches, as by said rule required, or at all. In this connection the plaintiff avers that because of such noncompliance with the above rules the claimant's right to the use of the water does not and cannot relate back to the posting of the notice or at all, as provided by Article Nine of said rules, and further that the claimant's right, if any it had, was forfeited and he or it was deprived of the same because of the failure to comply with the rules above referred to, as against the plaintiff who in all respects complied with said rules in relation to the appropriation of the water claimed by it as set forth in the complaint. This is in accordance with the provisions of Article Ten (10) of the rules above set forth. In this connection the plaintiff further avers:

That the Ebner Gold Mining Company never did commence work looking towards the making of the

excavation or the construction [48] of the works to divert the water attempted to be claimed by it under said notice; that its right to the use of said water, if any it ever had, was forfeited because of its failure not to commence work looking toward the making of the excavation or the construction of the works, with which the water was intended to be diverted within twenty days after the posting of said notice. And in this connection it is further averred that the months of August and September are within the working season as applied to the Territory through which Gold Creek flows. And it is averred that by reason of such failure to commence work as above stated within the time limited by the said rules, the Ebner Gold Mining Company forfeited whatever right it ever had, if it ever had any, to the use of the water attempted to be appropriated and was, by virtue of Article Ten of the rules above set forth deprived of such right as against the plaintiff, an appropriator who in all respects complied with said rules.

Referring to paragraph ten of the defendant's answer, the plaintiff avers that the point on which L. D. Mulligan posted the notice of water appropriation, referred to in the complaint, is situate in wild and unoccupied territory a considerable distance down the creek to the south of the buildings owned and in the possession of the Ebner Gold Mining Company; that in posting the notice at that point it was the intention of the plaintiff to post the same immediately below the lower or most southerly side line of the Lotta claim and not upon said Lotta

claim; that if said Lotta claim were located upon the ground in accordance with the field-notes contained in the [49] patent thereof, starting from known and well-established points in the vicinity or by tying said claims to Gold Creek in the manner indicated in the patent of said claim, said ties being the only ties or calls to natural objects given in said patent, the point where the notice was posted by the said Mulligan would be below and to the south of the lower side line of the Lotta claim and not on said claim; that if said claim were located with reference to certain stakes found in the ground, the location of which was unknown to the plaintiff at the time the said L. D. Mulligan posted its said location notice, the said notice would be a few feet above and to the north of the lower side line of said Lotta claim, and on the Lotta claim.

Stricken.—J. W. B.

Referring especially to the allegations of paragraph ten (10) in the defendant's answer, the plaintiff denies that either it or the said L. D. Mulligan went upon the Lotta mining claim as a malicious or wilful or naked trespasser, or at all except as herein-after stated. And in this connection and in order to establish its good faith in the premises, the plaintiff avers:

Stricken.—J. T. Reed, Dep. Clerk. J. W. Bell.

That the point at which the said L. D. Mulligan posted the notice of water appropriation, as alleged in the complaint, is situate in wild and unoccupied territory; that the lower or southerly side line of the Lotta lode mining claim was not at the time the no-



tice was so posted established or declared by a judicial decision or otherwise; that if said Lotta claim were surveyed and located upon the ground in accordance with the field-notes contained in the patent thereof, starting from known and well-established points in the vicinity, or by tying said claim to Gold Creek in the manner indicated in the patent of said claim, said tie being the only tie or call to natural objects given in the patent, the point where the notice was posted by the said Mulligan would be below and to the south of the lower side line of the Lotta claim and not on said claim.

Stricken.—J. T. Reed, Dep. Clk.

In this connection the plaintiff further avers: That it was claimed that there were at that time upon the ground certain stakes intended to mark at least some of the corners of the Lotta mining claim upon the ground, but that the plaintiff was entirely without any knowledge concerning either the claim so made or the existence of such stakes, and that the only available means by which the plaintiff could determine the location of the Lotta claim upon the ground consist [50] in the field-notes given in the patent and such known, established and familiar objects as the corners of plaintiff's claims and other like points; that the plaintiff consulted all the available data and used all the means at hand with a view of determining the southerly side line of the Lotta, and in so doing reached the conclusion in good faith that the same was situate upon the ground to the north of and above the point where the said notice of the said Mulligan was posted, so that the said last-men-

tioned point would not fall or be upon the Lotta claim; that the plaintiff thereupon with *bona fide* and honest intention of posting said notice to the south of and below the boundary of the said Lotta claim caused the same to be posted at the point where the same was posted by L. D. Mulligan. That shortly thereafter its attention was directed to the fact that the Ebner Gold Mining Company, one of the defendants herein, claimed the southerly side line of the Lotta to be further to the south, so that the said Mulligan notice as posted would fall upon the Lotta claim; that immediately upon being so advised the plaintiff formed the intention of diverting the water at the point below the line so claimed by the Ebner Gold Mining Company as the southerly line of the Lotta claim, and afterwards built its dam and intake at a point below the line so claimed as the southerly side line of the Lotta claim by the said Ebner Gold Mining Company; that the southerly line of the Lotta lode mining claim was, after the notice was posted and after the plaintiff had built its dam and intake at the point where the same is now situate, declared and adjudicated to be marked by the stakes upon the ground above referred to, so that the point where the said Mulligan notice was posted was determined to be upon the [51] Lotta claim. The dam and intake of the plaintiff constructed upon the ground, however, was to the south of and below the southerly boundary of the Lotta claim as so established and not upon the said Lotta claim.

Stricken.—J. T. Reed, Dep. Clerk.

Referring especially to the allegations of paragraph ten (10) in defendant's answer the plaintiff denies that it went on the Lotta mining claim as a malicious or willful or naked trespasser, but admit that it did go upon said claim to post a notice and did post the said Mulligan notice and not otherwise by mistake in good faith not knowing where the boundaries where after making an honest effort to determine the location of the same. [52]

J. W. Bell, J. T. Reed, Dep. Clk.

In this connection the plaintiff avers that it acted in the best of faith in determining the lower side line of said Lotta claim, consulted the notes of said claim as contained in the patent, as well as other data available and at hand and determined upon the point where said notice was posted by Mulligan after a consideration of all the facts before it, believing that said point was to the south of and below the lower side line of said Lotta and not on said Lotta claim.

Stricken.—J. W. B.

In this connection the plaintiff avers that the work done by it looking towards the appropriation of the water during the month of August and early part of September, was of such a character that it was necessary to perform the same at the points and in the manner that it was done regardless of [53] the exact point where the water was to be diverted from Gold Creek, that is to say, said work was as necessary and applicable in connection with the diversion made at the point where the Alaska-Juneau dam was afterwards constructed and the waters di-

verted and appropriated, as it would have been in connection with the diversion made at the exact point where the said notice of the said L. D. Mulligan was posted, or any other point along Gold Creek in that immediate vicinity, and that none of the work done was wasted or inapplicable or unnecessary in connection with the diversion of the water at the point where the diversion was made, a short distance below the said point where the said L. D. Mulligan posted said notice and below and to the south of the lower side line of the Lotta as indicated by the old stakes above referred to. except that at a time when the plaintiff had a large crew of men at work upon the ground, a tunnel was started and driven a few feet and it was afterwards found that portal of said tunnel was a few feet too high to admit of carrying the water through the same if diverted at the point where the diversion was afterwards made, and a new tunnel was started at a point lower down on a grade finally adopted as the grade for the flume line. At the time said first-mentioned tunnel was being started, however, other men were also employed upon the ground doing other work necessary in connection with the appropriation of the water at the point where the diversion and appropriation was afterwards made, which said work was being carried on simultaneously with the work in connection with the driving of the said first-mentioned tunnel. [54]

And further replying to the allegations of paragraph ten, the plaintiff avers that neither the Ebner Gold Mining Company, nor any other one or all of



the defendant companies or of the defendants, now is or ever was the owner, as referred to in said Answer, of the Parish No. 2 lode mining claim. In this connection the plaintiff avers that on the 8th day of May, 1911, the defendant, the Ebner Gold Mining Company brought an action against the plaintiff, the Alaska-Juneau Gold Mining Company, in the District Court for the District of Alaska, Division Number One, at Juneau, said action being No. 835—A on the docket of said court; that the complaint, answer and reply in said cause are in words and figures as follows, to wit:

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 835—A.

EBNER GOLD MINING COMPANY, a Corporation,  
Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

### **Amended Complaint.**

Plaintiff complains of the defendant and alleges:

1.

That the plaintiff is a corporation (organized December 5, 1895), and existing under and by virtue of the laws of the United States provided for the District of Alaska, and is authorized to do and has been engaged and doing a general mining business [55] in said District for over fifteen years.

2.

That the defendant is a corporation duly organized and doing business in the District of Alaska.

3.

That the plaintiff is now and has been for several years last past seized in fee and possessed and entitled to the possession of that certain patented lode mining claim situated in Harris Mining District, District of Alaska, viz.: The Lotta Lode Mining claim, U. S. Mineral Survey No. 87, more particularly described as follows, to wit: Beginning at Corner No. 1, Lotta lode claim (patented), a post at the N. W. center end of claim; thence north  $57^{\circ} 24'$  east 150 feet to Corner No. 2; thence south  $31^{\circ} 36'$  east 1500 feet to Corner No. 3, identical with corner No. 5 Taku Gold & Silver lode claim, Survey No. 88, patented, and Corner No. 1, Royal lode, Survey No. 238, patented; thence south  $57^{\circ} 24'$  west 150 feet to southeast center end of Lotta lode, 300 feet to Corner No. 5, identical with Corner No. 5 Royal lode, Survey No. 238, patented; whence east side doorway of Old Cabin bears North  $5^{\circ} 7'$  east 96,2 feet distance; thence north  $31^{\circ} 36'$  west 1500 feet to Corner No. 6; thence north  $57^{\circ} 24'$  east 150 feet to NW. center end and place of beginning. Mag. var. of all courses from a true meridian  $32^{\circ}$  east of north.

4.

That while plaintiff was so seized, the defendant between the — day of August, A. D. 1910, and the commencement of this action, and without right or title, entered into possession of part of said Lotta lode mining claim, and constructed thereon a dam

and flume for the purpose of conveying from, on [56] and over part of said patented Lotta lode mining claim the waters of Gold Creek flowing in, through and over said Lotta lode mining claim; and ousted and ejected therefrom, and now unlawfully and wrongfully withholds the possession thereof from the plaintiff.

#### FOR A SECOND CAUSE OF ACTION:

##### 1.

That the plaintiff is a corporation authorized to do and doing business in the District of Alaska, and organized, etc., as mentioned in paragraph 1 of the first cause of action.

##### 2.

That the defendant is a corporation doing business in the District of Alaska.

##### 3.

That the plaintiff is now, and has been for several years last past, seized, possessed and entitled to the possession, and the owner by discovery, location, staking and marking of the boundaries and recording by its grantors, and by a full compliance with the laws of the United States, and the doing and performing of the annual assessment work, of the Parish No. 2 lode mining claim, situate in the Harris Mining District, District of Alaska, and fully described in the location notice thereof of record in book 15 of Lodes, page 157, of the Records of the Juneau Recording District, in the office of the recorder of said Juneau Recording District, in the District of Alaska, as follows, viz.:

Commencing at the notice of location posted on a

post in Gold Creek canyon about 600 feet in a westerly direction [57] from the southwest corner of the Lotta patented claim and running in a southeasterly direction parallel to the said Lotta and the Royal lode claims, patented, and about 300 feet from the same to the end of lode claim, Parish No. 1, being 700 linear feet, and from the location post in a northwesterly direction parallel with the southwest line of the said Lotta lode claim 800 linear feet, together with 300 feet in width of surface ground on each side of the center of the lode line. Side lines are described as follows, viz.: Commencing at the southeast corner marked by a post situated about 125 feet in a southeasterly direction from the southwest corner of the Lotta lode claim and on the southwest side line of the Royal lode claim, thence in a southwesterly direction 600 feet to a post; thence in a northwesterly direction parallel with the southwest side line of said Lotta lode claim 1500 feet to a post, thence in a northeasterly direction 600 feet to the southwest side line of the said Lotta lode claim; thence southeasterly along the southwest side line of the said Lotta lode claim to the southwest corner of said lode claim and 125 feet beyond in the same direction to a post, the point of beginning.

## 4.

That while plaintiff was so seized and possessed and entitled to the possession of the above-described Parish No. 2 lode mining claim the defendant, between the — day of August, A. D. 1910, and the commencement of this action, and without right or title, entered into possession of part of said Parish



No. 2 lode mining claim hereinabove described, and constructed [58] and built upon, across and over said Parish No. 2 lode mining claim a grade and placed thereon a flume, for the purpose of conveying the waters of Gold Creek over, upon and across the said Parish No. 2 lode mining claim; and ousted and ejected plaintiff therefrom, and now unlawfully and wrongfully withholds the possession thereof from the plaintiff.

FOR A THIRD CAUSE OF ACTION:

1.

That the plaintiff is a corporation authorized to do and doing business in the District of Alaska, and organized and existing as stated in paragraph 1 of the first cause of action.

2.

That the defendant is a corporation doing business in the District of Alaska.

3.

That the plaintiff is now, and has been for several years last past, seized, possessed, and entitled to the possession, and the owner by discovery, location, staking and marking of the boundaries, and the doing and performing of the annual assessment work and extensive development by tunnel, etc., and by actual occupation, and by a full compliance with the laws of the United States, of the Cape Horn lode mining claim, situated in the Harris Mining District, District of Alaska, and described as follows, viz:

Commencing at the NE. corner of Cape Horn No. 1 lode, whence the SW. corner of Parish No. 2 lode, Survey No. 934, [59] bears S. 48° 30'

east 329 feet distance; thence along Gold Creek bottom south  $45^{\circ}$  west 600 feet to the SE. corner of claim; thence N.  $45^{\circ}$  west 1500 feet to the SW. corner of claim; thence North  $45^{\circ}$  east 600 feet to NW. corner of claim; thence south  $45^{\circ}$  east 1500 feet to the NE. corner of claim, and the place of beginning, containing an area of 20.661 acres. The southeast corner of this claim is further described as being in Gold Creek bottom and about 125 feet in a northeasterly direction above the Jualpa dam.

## 4.

That while plaintiff was so seized, possessed and in the actual occupation, and entitled to the possession, of said Cape Horn lode mining claim, the defendant between the — day of July, A. D. 1910, and the commencement of this action, and without right or title, entered into possession of part of said Cape Horn lode mining claim above described, and erected and built thereon a house or cabin, and ousted and ejected plaintiff therefrom, and now unlawfully and wrongfully withholds the possession thereof from the plaintiff.

WHEREFORE plaintiff prays judgment against the defendant:

1. For the recovery of the possession of the premises from which plaintiff has been ousted and ejected by the defendant as in this complaint fully set forth and described.

2. That the defendant be restrained and forever enjoined from interfering with the possession of the plaintiff in and to the mining claims herein described or any part [60] thereof.

3. For costs and disbursements of this action.

4. For such other and further relief as plaintiff may be entitled to receive.

WINN & BURTON,  
Attorneys for Plaintiff.

---

*In the District Court for the District of Alaska,  
Division No. One, at Juneau.*

Case No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Answer.**

Comes now the defendant and for answer to the first cause of action stated in the amended complaint, admits, denies, and alleges as follows:

1st. The defendant denies each and every allegation in said amended complaint contained with reference to said first cause of action, except that the defendant is a corporation doing business in Alaska.

2d. The defendant alleges that the plaintiff is not a corporation either *de jure* or *de facto*, and has no capacity either to sue or hold property. [61]

3d. That the defendant is the owner of and entitled to the possession of all that certain tract of mining ground situated up Gold Creek, about one mile from the town of Juneau in the District of

Alaska, more particularly described as follows, to wit:

“Commencing at discovery post, thence south 14 degrees west 100 feet to post No. 1, center of south end line lying on north side line of Colorado lode, U. S. S. 612; thence north 84 degrees east 300 feet to post No. 2; thence north 14 degrees east 1500 feet to post #3; thence south 84 degrees west 600 feet to post #4; thence south 14 degrees west 1500 feet to post #5, identical with corner #5 Colorado lode; thence north 84 degrees east 300 feet to post #1.”

—which said mining ground is held and claimed by this defendant under and by virtue of a certain lode mining location made by J. P. Corbus in the month of October, 1899, and known as the Oregon mining claim, and also by virtue of a certain mining lode location made on July the 20th, 1910, by R. G. Datson, which said location is designated and known as the Oregon lode mining claim; that both of which said mining claims and locations were by mesne conveyances conveyed to this defendant and this defendant is now the owner thereof.

4th. That the defendant is the owner, in the possession of and entitled to the possession to a certain patented lode mining claim U. S. Survey #641, contiguous to the Oregon lode mining claims above described and more particularly bounded and described as follows: [62]

“Beginning at Cor. No. 1 Colorado lode, identical with Cor. No. 4 Royal lode Sur. No. 238, S. E. Loc. Cor. Colorado bears S. 33.45 E. 77.64 feet, U. S. Loc. Mon. No. 2, situated in Silver



Bow Basin, bears 86.47 E. 5817 feet distance; thence S. 56.1 W. along 2-3 Nevada lode Sur-#612, 86.30 feet to Cor. No. 2, identical with Cor. No. 2 Survey #612; thence S. 41.15 E. along line 2-1 Nevada lode Sur. #612, 34.96 feet to corner No. 3; thence S. 84.00 W. 1381.75 feet to Loc. Cor. #4; thence N. 33.45 W. 600 feet to Loc. Cor. No. 5; thence N. 84.00 E. along creek bottom 1474.11 feet to Loc. Cor. No. 6; thence S. 33.45 E. 522.36 to Cor. No. 1, the place of beginning, containing an area of 17.862 acres Var. 30 Deg. 60 Min. E."

5th. The defendant further alleges that at the time of making the discovery thereon hereinafter referred to the ground hereinafter described as being within the boundaries of the Canyon vein or lode was open, unoccupied, unexplored public land of the United States, save and except as to any claim of the defendant Alaska-Juneau Gold Mining Company. That during the month of October, 1910, to wit, on the 8th day of October, 1910, one W. R. Lindsay, a citizen of the United States, made a discovery of rock in place bearing gold and other precious metals within the exterior boundaries of the said Canyon vein or lode claim as hereinafter described, and the said W. R. Lindsay did thereupon locate the lode or vein within which the said mineral was so discovered by him by marking the boundaries of the claim located with substantial monuments so that the same could be readily traced upon the ground, and did, within a reasonable time thereafter and as soon as the necessary surveying [63] could be done, post

a notice on the ground and record with the District Recorder at Juneau, the recording district within which said claim was located, his notice of location, which said notice was so recorded on the 18th day of October, 1910. The claim so located was named and designated as the Canyon vein or lode; that the said Canyon vein or lode so located and situated is near or above the head of the Last Chance Basin, in the Harris Mining District, and is more particularly described as follows, to wit:

“Beginning at this notice which is situated on the left bank of Gold Creek about fifty feet up the stream from the lower Alaska-Juneau dam and about 400 feet down the stream from the lower Ebner mill in Harris Mining District, Alaska, and running 900 feet northwesterly and 600 feet southeasterly therefrom with 300 feet on each side of the center line so described. This claim is bounded on its northwesterly side by the Lotta lode mining claim U. S. Lot No. 87.”

6th. The defendant further alleges that its dam referred to in the amended complaint as being upon ground owned by the plaintiff, is in truth and in fact situated upon and within the boundaries of the defendant's above-described Oregon and Canyon lode mining claims. And that the flume referred to in said amended complaint is situated upon and within the boundaries of the defendant's said Oregon, Canyon and Colorado lode mining claims, extending from said dam over and across said Oregon and Canyon claims until it reaches the point where said Oregon

and Colorado claims adjoin, from which point it extends across [64] said Colorado claim until it reaches the compressor plant of the defendant, situated upon said Colorado claim, where the waters of Gold Creek conveyed thence by means of said flume are utilized.

7th. And the defendant further answering said first cause of action stated in the amended complaint herein, alleges: That on the 17th day of November, 1910, it commenced a suit to quiet the title to its above-described Oregon lode mining claims, and to all the ground embraced within the boundaries thereof, and that on the 21st day of November, 1910, it commenced a suit to quiet the title to its above-described Canyon lode mining claim and to all the ground embraced within the boundaries thereof which suits were brought in the District Court for the District of Alaska, Division No. 1, at Juneau, against the pretended corporation styled the Ebner Gold Mining Company, the plaintiff herein, and others. That the subject matter in dispute between the parties in said suits and the subject matter in dispute in this action are the same and identical. That said suits so brought are still pending and undecided, and were so pending and undecided at the time this action was brought.

The defendant for answer to the second cause of action stated in the amended complaint, admits, denies and alleges as follows:

1st. The defendant denies each and every allegation in said amended complaint contained with reference to said second cause of action, except that the defendant is a corporation doing business in Alaska.

2d. The defendant alleges that the plaintiff is not a corporation either *de jure* or *de facto*, and has no capacity either to sue or hold property. [65]

2d-b. And defendant further alleges as a further defense to said second cause of action that if the plaintiff ever acquired any interest in premises and mining claims set forth in said second cause of action, neither the plaintiff nor any of his grantors or predecessors in interest did or performed or caused to be performed any work, labor or improvements of any kind and nature or description, upon or for the use and benefit of said Parish No. 2 lode claim under or by virtue of said alleged location of plaintiff, and that plaintiff and his grantors wholly failed and neglected to represent said claim or resume work thereon until long after the water and mining locations of defendants as hereinafter set forth and have failed to record the affidavit of annual labor and improvements required by statute, and thereby the plaintiff's claim, if any he had, became and was actually forfeited.

3d. That the defendant is the owner of and entitled to the possession of all that certain tract of mining ground situated up Gold Creek, about one mile from the town of Juneau in the District of Alaska, more particularly described as follows, to wit:

“Commencing at discovery post, thence south 14 degrees west 100 feet to post No. 1, center of south end line lying on north side line of Colorado lode U. S. S. 612; thence north 84 degrees east 300 feet to post No. 2 thence north 14' de-



degrees east 1500 feet to post #3; thence south 84 degrees west 600 feet to post #4; thence south 14 degrees west 1500 feet to post #5, identical with corner #5 Colorado lode; thence north 84 degrees east 300 feet to post #1." [66]

—which said mining ground is held and claimed by this defendant under and by virtue of a certain lode mining location made by J. P. Corbus in the month of October, 1899, and known as the Oregon Mining claim, and also by virtue of a certain mining lode location made on July the 20th, 1910, by R. G. Datson, which said location is designated and known as the Oregon lode mining claim; that both of which said mining claims and locations were by mesne conveyances conveyed to this defendant and this defendant is now the owner thereof.

4th. That the defendant is the owner, in the possession of and entitled to the possession a certain patented lode mining claim U. S. Survey #641, contiguous to the Oregon lode mining claims above described, and more particularly bounded and described as follows:

“Beginning at Cor. No. 1 Colorado lode, identical with Cor. 4 Royal lode Sur. No. 238, S. E. Loc. Mon. No. 2, situate in Silver Bow Basin, bears 86.47 E. 5817 feet distance; thence S. 56.15 W. along 2-3 Nevada lode Sur. #612, 86.30 feet to Cor. No. 2, identical with Cor. No. 2, Survey No. 612; thence S. 41.15 E. along line 2-1 Nevada lode Sur. #612, 34.96 feet to corner No. 3; thence S. 84.00 W. 1381.75 feet to Loc. Cor. #4; thence N. 33.45 W. 600 feet to Loc. Cor. No. 5; thence

N. 84.00 E. along creek bottom, 1474.11 feet to Loc. Cor. No. 6; thence S. 33.45 E. 522.36 to Cor. No. 1, the place of beginning, containing an area of 17.862 acres — var. 30.00 E.”

5th. The defendant further alleges that at the time of making the discovery thereon hereinafter referred to, the [67] ground hereinafter described as being within the boundaries of the Canyon vein or lode was open, unoccupied, unexplored public land of the United States, save and except as to any claim of the defendant, Alaska-Juneau Gold Mining Company. That during the month of October, 1910, to wit, on the 8th day of October, 1910, one W. R. Lindsay, a citizen of the United States, made a discovery of rock in place bearing gold and other precious metals within the exterior boundaries of the said Canyon vein or lode claim as hereinafter described, and the said W. R. Lindsay did thereupon locate the lode or vein within which the said mineral was so discovered by him by marking the boundaries of the claim located with substantial monuments so that the same could be readily traced upon the ground, and did, within a reasonable time thereafter and as soon as the necessary surveying could be done, post a notice on the ground and record with the District Recorder at Juneau, the recording district within which said claim was located, his notice of location, which said notice was so recorded on the 18th day of October, 1910. The claim so located was named and designated as the Canyon vein or lode; that the said Canyon vein or lode so located and situated is near or above the head of the Last Chance Basin, in the

Harris Mining District, and is more particularly described as follows, to wit:

“Beginning at this notice which is situated on the left bank of Gold Creek about fifty feet up the stream from the lower Alaska-Juneau dam and about 400 feet down the stream from the lower Ebner mill in Harris Mining District, Alaska, and running 900 feet northwesterly and 600 feet southeasterly therefrom with 300 feet on each [68] side of the center line so described. This claim is bounded on its northwesterly side by the Lotta lode mining claim U. S. Lot No. 87.”

6th. The defendant further alleges that its dam referred to in the complaint as being upon ground owned by the plaintiff is in truth and in fact situated upon and within the boundaries of the defendant's above-described Oregon and Canyon lode mining claims. And that the flume referred to in said complaint is situated upon and within the boundaries of the defendant's said Oregon, Canyon and Colorado lode mining claims, extending from said dam over and across said Oregon and Canyon claims until it reaches the point where said Oregon, Canyon and Colorado claims adjoin, from which point it extends across said Colorado claim until it reaches the compressor plant of the defendant situated upon said Colorado claim, where the waters of Gold Creek conveyed thence by means of said flume are utilized.

7th. And the defendant, further answering said second cause of action, stated in the amended complaint herein, alleges: That on the 17th day of

November, 1910, it commenced a suit to quiet the title to its above-described Oregon lode mining claims and to all the ground embraced within the boundaries thereof, and that on the 21st day of November, 1910, it commenced a suit to quiet the title to its above-described Canyon lode mining claim and to all the ground embraced within the boundaries thereof, which suits were brought in the District Court for the District of Alaska, Division No. 1, at Juneau, against the pretended corporation styled the Ebner Gold Mining Company, the plaintiff [69] herein, and others. That the subject matter in dispute in this action are the same and identical. That said suits so brought are still pending and undecided, and were so pending and undecided at the time this action was brought.

The defendant, further answering said second cause of action stated in the amended complaint, alleges:

1st. That the defendant, the Alaska-Juneau Gold Mining Company, is engaged in the business of opening up, developing and operating mines situated at or near Silver Bow Basin, in the District of Alaska, and that said corporation is the owner of and in the possession of a large group of mining claims, composed of thirty-one (31) patented and a considerable number of unpatented claims, situated in and near Silver Bow Basin, along Gold Creek, above the town of Juneau, in the District of Alaska. That said defendant has for many years past been operating its mines and developing the same.

2d. That the said Alaska-Juneau Gold Mining



Company, the defendant herein, has for many years last past been engaged in extracting the ore from its said mines and in developing the same, and has in connection with such work erected such mills and other appliances as were necessary to mill and extract the gold from the ore mined, and has in connection with its mining operations erected a thirty-stamp mill upon its said property, and pressed the development work done on said mines with all convenient speed, with a view of erecting other and larger mills and increasing its facilities for treating the ore extracted; that the development work done in connection with said [70] mining operations has been carried so far that the erection of a two hundred-stamp mill is now necessary to successfully carry on its said mining operations. With this end in view, the said defendant corporation has laid out a plan which includes the erection and construction of a two hundred-stamp mill on the shore of the Gastineau Channel, immediately below the town of Juneau, and the building of a tramway from said mill along the proposed route, extending from said mill to a point on the Colorado lode mining claim, which said last-mentioned Colorado lode mining claim is owned and possessed by the said Alaska-Juneau Gold Mining Company, and lies adjacent to and joins the Oregon and Canyon lode mining claims above described, which said tramway will at its terminal connect with a tunnel to be driven from the point where such connections are made through various lode mining claims, the property of the said Alaska-Juneau Mining Company, to the point where

the mining operations of said company are now being carried on. That there is flowing through, over and upon the above-described Oregon and Canyon lode mining claims a small creek carrying on an average, approximately 25,000 or 30,000 miner's inches of water; that said creek enters the said Oregon lode mining and Canyon claims across its northerly end line and flows thence southerly across said claims; that the waters of said creek so flowing across the said Oregon and Canyon claims were, on or about the first day of August, 1910, unappropriated, unused and unclaimed by any person or persons whatsoever and were flowing across said claims in their natural channel and thence on down through the Last Chance Basin and through Gold Creek Canyon into Gastineau Channel, and arm of the Pacific Ocean. That the Alaska Electric Light and Power [71] Company has appropriated and are using a small portion of the waters of said Gold Creek, diverting the same at a point approximately one-half mile below the point where the said Gold Creek passes out of the boundaries of the said Oregon and Canyon lode mining claims; that there are no other appropriators or users of the waters of said Gold Creek at any place between the point where the said creek enters the said Oregon and Canyon lode mining claims at its upper end and the mouth of said creek except the small portion diverted and used by the said Electric Light & Power Company as aforesaid; that all the remaining waters in the said creek on the said first day of August, 1910, were unappropriated and open to appropriation for bene-

ficial uses, and that on or about the said first day of August, 1910, while the said waters of said Gold Creek were thus unappropriated and unused, except in so far as they were appropriated and used by the said Alaska Electric Light & Power Company as aforesaid, one L. D. Mulligan, acting as agent and employee of the defendant, the Alaska-Juneau Gold Mining Company and for and on behalf of said company, located the unappropriated waters of said Gold Creek thus flowing therein as aforesaid, 20,000 miner's inches, to be diverted at a point on said Oregon lode mining claims, a short distance below the lower side line of the Lotta lode mining claim referred to in the plaintiff's amended complaint herein, and did then and there post a notice of his said locations, which said notice of location is in words and figures as follows:

“KNOW ALL MEN BY THESE PRESENTS: That I, L. D. Mulligan, of Alaska, a citizen of the United States, and over [72] the age of twenty-one years, have appropriated and claimed 20,000 miner's inches, of the water of Gold Creek, near Juneau, Alaska, to be used for mining, milling and other purposes.

Said water to be diverted from said creek at a point indicated by this notice, posted on a tree, and about one mile from the mouth of said Gold Creek.

Said water is to be diverted by ditch, pipe and flume.

(Signed) L. D. MULLIGAN.

Dated Aug. 1st, 1910.”

That said notice of location was signed by said

L. D. Mulligan in person, wherefore and whereupon, and on the 2d day of August, 1910, the said Mulligan made, executed and delivered to the said Alaska-Juneau Gold Mining Company his certain deed in writing, conveying to the said corporation all his right, title and interest in the waters so appropriated, which said deed of conveyance was made and executed for the purpose of vesting in the said corporation the legal title standing in the name of the said Mulligan, who, although acting as agent of the said corporation, signed said notice of appropriation in his own name. That said notice of appropriation was thereafter, and on the 8th day of August, 1910, duly and regularly recorded in the office of the District Recorder of the Juneau Recording District; the same being the district wherein said Gold Creek is located; that said notice of location was posted at or near the proposed point of diversion on the Oregon lode and Canyon lode mining claims [73] above described; that immediately after the posting of said notice, and upon the said 1st day of August, 1910, the said Alaska-Juneau Gold Mining Company commenced work looking towards the diversion and appropriation of the waters flowing said Gold Creek over and above any excess appropriated by the said Alaska Electric Light & Power Company to the extent of 20,000 miner's inches as claimed in said notice, and that a crew of men has been continuously at work in the construction of pipe, flume and ditch lines as well as the construction of a dam at the point of diversion, all of which dam, pipe, flume and ditch lines are intended to and will be



used for the purpose of so diverting the said waters of Gold Creek appropriated and located as aforesaid, and such work in connection with the diversion of said waters has been carried on by said company with as much speed as the conditions would permit of and without cessation or delay, and is still being so carried on, and will be pressed forward until the waters have been diverted and applied in accordance with the original intention; that the waters so appropriated were appropriated for the purpose of generating power and for other beneficial uses in connection with the operation of the two hundred-stamp mill to be built on the shore of Gastineau Channel as hereinbefore stated, and for the purpose of driving a compressor plant situated on the Colorado claim and for other uses in connection with its mining operations; that it is the intention and purpose of the said defendant, the Alaska-Juneau Gold Mining Company, to press the work of diverting the said waters and of conducting the same through pipes and flumes to the said proposed mill with as much speed as the weather and other conditions will admit of and without cessation [74] or delay, and to erect said mill and have the same in readiness, and to commence the construction of said mill as soon as the necessary material can be obtained and placed upon the ground, and to press said work to completion, and it is the intention of the said company to divert the waters of Gold Creek by means of said dam, flumes and pipe lines as soon as the weather and other conditions will permit, and to apply the same in connection with the operation

of said two hundred-stamp mill and said other uses, the same being the beneficial uses designed. That the use of all the said waters so appropriated to the extent of said entire 20,000 inches will be necessary in the operation of the said mill. That the dam situated on the Oregon and Canyon claims as afore-said has been completed as well as the flume line extending from said dam over and across said Oregon and Canyon claims to a point on the Colorado claim above described, where a compressor plant has been constructed by the defendant; that the waters of Gold Creek have been diverted by means of said dam and are now being conveyed to said compressor plant by means of said flume, where the same are applied and used for the purpose of generating power used by the defendant in driving the tunnel hereinbefore referred to, and for other purposes in connection with the construction of such works as are necessary in order to carry out its above referred to scheme of development adopted in connection with the operation of its mine. That on the 8th day of May, 1911, the defendant posted its amended notice of appropriation of the water already appropriated and claimed under the notice above set out, which said amended notice was posted at the point of diversion as described [75] and located in said notice, and was thereafter and on the said 8th day of May, 1911, duly and regularly recorded in the office of the recorder for the Juneau Recording District, the same being the district in which all the points herein referred to in connection with the water so to be appropriated and the use

thereof are situated. Said amended notice so posted and recorded is in the words and figures as follows:

“NOTICE IS HEREBY GIVEN that, whereas, the Alaska-Juneau Gold Mining Company did, by its agent, L. D. Mulligan, *posting* a notice from the waters appropriating 20,000 inches of water from the waters flowing in Gold Creek, which notice is in words and figures as follows:

‘KNOW ALL MEN BY THESE PRESENTS: That I, L. D. Mulligan of Alaska, a citizen of the United States and over the age of twenty-one years, have appropriated and claimed 20,000 miner’s inches, of the water of Gold Creek, near Juneau, Alaska, to be used for mining, milling and other purposes.

Said water to be diverted from said creek at a point indicated in this notice, posted on a tree, and about one mile from the mouth of said Gold Creek.

Said water to be diverted by ditch, pipe and flume.

L. D. MULLIGAN.

Dated Aug. 1st, 1910.’

And whereas, the said L. D. Mulligan acted as the agent of the undersigned in this connection, who is now the owner and holder of said right so located by said Mulligan by virtue [76] of such agency and by virtue of conveyances from said Mulligan:

Now, therefore, the undersigned, not waiving any of its right or abandoning any of the rights belonging to it under and by virtue of said above-described notice and the work of diverting the water of Gold Creek appropriated by reason thereof, and done

pursuant thereto, but for the purpose of giving a more accurate and detailed description of the beneficial uses to which said water is to be put and the place and places where the same is to be used when diverted and applied under the aforesaid notice and of the means whereby the same is to be conveyed to such place of intended use, hereby posts and records this additional and amended notice of appropriation of water and gives notice to all persons whatsoever that it claims and appropriates under and by virtue of such original notice as well as this amended notice 20,000 miner's inches of the waters of Gold Creek measured under a four-inch pressure for mining, milling power and other beneficial uses, to be diverted from said creek at a point at or near the place where this notice is posted, the same being posted on the banks of Gold Creek about one mile and one-eighth ( $\frac{1}{8}$ ) above the town of Juneau about 500 feet below the Ebner mill and about 1250 feet above the Jualpa Dam and immediately at the point where the dam of the Alaska-Juneau Gold Mining Company has been constructed and where the water is diverted under the above-mentioned location notice, signed by L. D. Mulligan. The water so appropriated and claimed under said notice of L. D. Mulligan and hereunder is to be diverted from Gold Creek at that point, and conveyed by means of pipes, flumes, ditches and other means of conveyances, along [77] a proposed route running above the southerly side of the Last Chance Basin and thence around Swede Hill to a point at or near Jorgenson sawmill, on the shore of Gasti-



neau Channel, where the same is to be applied and used for the purpose of generating power and for other purposes to be used in connection with the operation of a stamp-mill at or near that point, and a portion of the water so diverted and appropriated is to be used at a point on the Colorado claim near Snow Slide Gulch for the purpose of driving a compressor plant at that point and for the purpose of generating power at that point and these waters so used on said Colorado claim will be conveyed by a pipe, flume, ditch along the route above indicated and taken from said pipe, flume and ditch to the extent so necessary at said last-mentioned place if used for the purpose of furnishing power at that point as above stated. The remainder of the water carried not used at this point, at any time to be applied in connection with the operation of the stamp-mill to be built near the Jorgenson sawmill as above stated.

Notice is expressly given that the undersigned has not abandoned or waived any of the rights acquired under and by virtue of the notice of said L. D. Mulligan or by virtue of any of the work it has heretofore performed looking towards the diversion and appropriation of the waters of Gold Creek or any other right or rights whatsoever it has at this present time to the waters of said creek.

Posted on the ground this 8th day of May, 1911.

ALASKA-JUNEAU GOLD MINING CO.

By ROBERT A. KINZIE,

Agent and General Superintendent." [78]

3d. That said flume and ditch used for the diver-

sion of the waters of Gold Creek as aforesaid is constructed over and across a portion of the Oregon and Canyon claims in conflict with the alleged Parish No. 2, claim as described in the complaint.

4th. That the pretended Parish No. 2 and Oregon and Canyon claims are all unpatented mining claims, and the ground within the boundaries of said claims wholly belongs to the unpatented public domain of the United States, claimed under said pretended Parish No. 2, Oregon and Canyon locations but not otherwise claimed, located or held by anyone except the United States, and has never been in the actual and physical possession of anyone except the defendant.

5th. That in order that the mines of the Alaska-Juneau Gold Mining Company may be worked to advantage, it is necessary that the plans above delineated and described be carried out to its fullest extent in every detail and that the water of Gold Creek be conveyed to the proposed site of the mill to be erected and there used to generate the power with which said mill can be operated, and also that said water be conveyed to the compressor plant now situated on the Colorado plant and there used for the purpose of generating power and other purposes and uses in connection with the driving of the tunnels above described and the operation of the mines. That the water of Gold Creek cannot be diverted and carried to either point and applied to the uses indicated, unless the same be diverted approximately at the point where the dam is now built and where the same are now being diverted and carried

by means of pipes, flumes and ditches along the ditch and flume-line above described extending over [79] and across the land embraced within the unpatented Oregon claims and the other pretended unpatented conflicting claims and the said water cannot be diverted and appropriated for use in connection with the operations of the defendant's mines, unless a ditch, flume and pipe-line be built across said ground and along the route indicated above from the point of diversion to the place of use.

6th. That gold was first discovered in Alaska in about the year 1880, that some of the mining claims now opened and operated by the defendant's company were the first quartz locations made in the District of Alaska and were made at about that time. That the newly discovered district was named the "Harris Mining District," after its discoverer. That the topographical and climatic conditions of Southeastern Alaska, the territory in which the new discovery was made were such that the soil was not adapted for any other purposes, except that here and there some small gardens may possibly be made where some few vegetables that need not be ripened in order to make them fit for use could be produced, and that the doctrine of riparian right was wholly inapplicable to the territory of Alaska and to the conditions obtainable there. That Gold Creek as well as all and singular the property rights and other places connected with the same to which reference is made in this answer are situated within the boundaries of the Harris Mining District. That at a meeting of the miners of the Harris Mining

District held in the year 1882, the miners of said district duly and regularly adopted the following rules with reference to the diversion and appropriation of water: [80]

“Article 1. The right to use the running water flowing in a river or stream, or down a canyon or ravine, may be acquired by appropriation.

Art. 2. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases.

Art. 3. The person entitled to the use may change the place of diversion, if others are not injured by such change and may extend the ditch, flume, pipe or aqueducts by which the diversion is made to place beyond that where the first use was made.

Art 4. A water appropriation may be turned into channel of another stream and mingled with its waters and then reclaimed, but in reclaiming it the water already appropriated by another must not be diminished.

Are. 5. As between appropriators, the one first in time is the one first in right.

Art. 6. A person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein: First: He claims the water there flowing to the extent of (giving the number) inches, measured under a four-inch pressure. Second: The purpose for which he claims it, and the place of intended use. A copy of the notice must within ten (10) days after



it is posted be recorded in the books kept by the recorder of the district.

Art. 7. Within twenty days, during the working season, after the notice is posted, the claimant must commence the excavations or construction of the works, in which he intends to divert [81] the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by rain or snow.

Art. 8. By 'completion' *it* is meant conducting the waters to the place of intended use.

Art. 9. By a compliance with the above rules, the claimant's right to the use of the water related back to the time the notice was posted.

Art. 10. A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies therewith.

Art. 11. Persons who have heretofore claimed the right to water and who have not diverted nor applied it to some useful purpose, must after this title takes effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases."

That all and singular said rules and regulations have been and remain in force and have been universally observed by the miners of the Harris Mining District at all times since and are still being so observed and are in all respects in full force and effect.

7th. That ever since the discovery of gold in Alaska as above indicated, and up to the present

time, certain customs have been in force and have been observed universally by the miners of the Harris Mining District, the same being the district within which Gold Creek and all and singular the matters in dispute in this action are situated, and also by the miners in the territory outside of the said Harris Mining District, lying in [82] the vicinity of Juneau as well as all the various mining districts lying in *which* is known as Southeastern Alaska, That according to the customs of the miners of said territory so described the riparian owner requires no right to the water flowing within the stream by reason of such ownership, but the right to the use of such water could and can be acquired only by diversion, appropriation and application to a beneficiary use. That all and singular the rules adopted by the miners of the Harris Mining District as above indicated were and are observed by all the miners in the territory known as Southeastern Alaska, and all and singular the rights and liabilities conferred by or existing under, or by virtue of said rules, existed and are recognized by the customs of the miners of Southeastern Alaska, which said customs are uniformly and universally recognized and adhered to by all the miners residing in or operating within said territory embraced in what is known as Southeastern Alaska, and like customs are also recognized and existing in all the various districts within the territory of Alaska. That, by these customs of the miners, right to the use of water can be acquired only in the manner indicated by the rules of the miners above referred to and the failure to

comply with these rules and customs in accordance with the customs of miners above referred to, work a forfeiture against whoever fails to comply with said rules and customs and according to said customs, all rights are forfeited by the person acquiring the same upon a failure on his part to take any one or more of the succeeding steps, required to be taken by him under said rules and customs; that is, the rules adopted by the miners of the Harris Mining District as [83] above stated are in all respects identical with the customs of the miners universally observed and recognized by the miners in all mining districts of Southeastern Alaska, including the Harris Mining District, and also recognized by the miners of the entire Territory of Alaska in accordance with said customs that the riparian proprietor has no right as such to the use of the water flowing in the stream and the right thereto can be acquired only in the manner above indicated.

That according to the customs of the miners, recognized and observed in the Harris Mining District as well as in all the other mining districts above referred to, including all mining camps situated in *the* Southeastern Alaska, the right to construct ditches and flumes to be used in connection with the diversion and appropriation of water, over and across all portion of the public domain of the United States claimed by mineral claimants, whether said ground be claimed and held under lode placer location, exists and is recognized and has existed and has been recognized at all times since gold was first discovered in Alaska, under which said

custom each miner or person operating a mine has a right to go upon the unpatented mining claims of others and construct ditches and flumes over and across the same for the purpose of diverting and appropriating water and conveying the same to a beneficial use connected with the operation of his mine, the sluicing of his gravel or the milling of his ores.

That all and singular the above referred to customs and rights existing thereunder are universally and uniformly observed and recognized by all the miners residing, not only in the Harris Mining District, but in all the various mining districts of Southeastern [84] Alaska, as well as those of other portions of the territory of Alaska, and have been recognized and have so existed as long as mining operations have been carried on in any and all the various districts.

8th. That the work done in the excavation by the defendant's company in no wise damages the ground across which said flume-line has been built, and that the construction and maintenance of said flume-line in no way interferes with the use of the ground across which same has been built for mining or other purposes, and in no wise hinders or interfered with the mining of the ores contained within any of the mining claims across which same has been built or constructed, and add to and in no wise detracts from the value of the same or any of them.

9th. That the right of use of water acquired by diversion, appropriation and application to beneficial use, as recognized by the above-referred to cus-



toms as well as the right to construct ditches and flumes for the purpose of diverting and conveying water, has been and is recognized by the decision of the Courts of Alaska.

WHEREFORE, The defendant prays that the plaintiff's amended complaint be dismissed and that they and each of them recover the costs and disbursements in this behalf incurred.

SHACKLEFORD & BAYLESS,  
HELLENTHAL & HELLENTHAL,  
Attorneys for Defendant. [85]

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 835—A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Reply to Answer.**

Comes now the above-named plaintiff and replying to the answer herein of the above-named defendant states:

I.

Referring to the second paragraph of said answer, this plaintiff alleges that it is a corporation, organized and existing as stated in the amended complaint herein and has been acting as such corporation transacting business in the said District of Alaska

for more than fifteen years, and has transacted business with the said defendant herein and has at all times been recognized by the said defendant as a corporation and entitled to transact business as such and to perform all the other functions of a corporation.

## II.

Referring to paragraph III of said answer, this plaintiff denies the same and each and every portion thereof, and states further in respect to said paragraph that if the said J. P. Corbus ever did undertake to make a location of a mining claim [86] called the Oregon, that said attempted location was made on behalf of and for the said defendant and was attempted to be made over, in and upon the mining claims belonging to the plaintiff set out and described in the amended complaint herein, and was attempted to be made over, in and upon said claims or some portion thereof while the plaintiff herein, or its predecessors in interest, or grantors, were the owners and in possession of each and all of said claims and after the said Lotta claim set forth and described in the amended complaint herein was patented and while the said Parish No. 2 mining claim described in the amended complaint were valid and subsisting claims, held, owned and possessed by the plaintiff herein or its grantors by reason of prior discovery, location, staking and marking of the boundaries, posting of notices and recording of the same and by a full compliance with the laws of the United States pertaining to the performance of annual assessment work thereon, and

that if said Corbus ever attempted to locate the premises described in the answer as the Oregon claim for or on behalf of himself or said defendant, the said attempted location and said claim to the premises described in said answer as the Oregon claim were afterwards abandoned and forfeited by reason of said defendant and its agent and representative, Corbus, failing in all respects to comply with the laws of the United States and local customs, rules and regulations pertaining to the performance of the annual assessment work on said pretended lode mining claim; that the said defendant, nor its predecessors in interest, nor the said Corbus, never performed any assessment work on said claim whatsoever and never attempted to comply with the law [87] in regard to performing the necessary annual assessment work on said pretended location;

And this plaintiff further alleges that if the said R. G. Datson mentioned in said paragraph ever attempted to make any location of what is termed the Oregon Lode mining claim in the year 1910, that said Datson attempted to make the same on behalf of the said defendant herein, and any and all attempted loctions made by the said Datson were in, over and upon the property, mining claims and premises owned and possessed by the plaintiff herein, as set forth and described in the amended complaint, and was an attempt to make a location over, in and upon the Lotta patented claim, the Taku Gold & Silver claim, patented, and the Parish No. 2, the latter mining claim being prior, subsisting and valid locations owned, held and possessed by this plaintiff

by reason of prior discovery, location, marking on the ground, posting and recording of notice and in full compliance with the laws of the United States in respect to holding mineral land and in complying with the law, local rules and regulations pertaining to the performance of annual assessment work thereon, and was an attempt made by the said Datson on behalf of said defendant company to relocate the said pretended Oregon claim as located by the said Corbus, in the manner hereinbefore set forth, and said attempted location by said Datson on the part of said defendant was false, fictitious and void, and was made, as this plaintiff verily believes, to harass and annoy said plaintiff and becloud the title to its said property.

### III.

Referring to paragraph IV of the said answer to the [88] amended complaint herein, this plaintiff denies the same and each and every portion thereof, and alleges that if said defendant is the owner and possessed of a certain patented mining claim known as United States Survey 641 and termed the Colorado Claim, the only premises or property that was ever patented by reason of said instrument and the only ground that was ever patented by virtue of said survey as described and located upon the ground by the monuments and actual measurements, irrespective of anything that may be asserted in said patent, is bounded and described as follows, to wit:

Beginning with Corner No. 1 of the Colorado lode, Survey No. 641, identical with Corner No.



4 of the Royal, Survey No. 238; thence south  $58^{\circ} 24'$  west 86.30 feet to Corner No. 2, identical with Corner No. 2 of the Nevada Lode, Survey No. 612; thence south  $39^{\circ} 06'$  east 34.96 feet to Corner No. 3; thence north  $88^{\circ} 30'$  west 1123.16 feet to Corner No. 4 identical with Corner No. 1 of the Idaho Placer, Survey No. 641; thence north  $31^{\circ} 36'$  west 600 feet to Corner No. 5, identical with Corner No. 6 Idaho Placer, Survey No. 641 and Corner No. 3 Last Chance Placer, Survey No. 142; thence south  $88^{\circ} 54'$  east 1215.12 feet to Corner No. 6 on line 5-4 Royal Lode, Survey No. 238, whence Corner No. 5 Royal Lode bears north  $31^{\circ} 36'$  west 567.64 feet, thence south  $31^{\circ} 36'$  west 522.36 feet to Corner No. 1, the place of beginning.

That said Colorado claim was patented as a subsequent and junior mining claim to the other mining claims which it lies between, and only as a matter of fact contains the ground embraced [89] within the exterior boundary lines above described and set forth.

#### IV.

Referring to paragraph V of said answer to the amended complaint, this plaintiff denies the same and each and every portion thereof, and alleges that if the said Lindsay mentioned in said paragraph did attempt to make a location of the premises described in said paragraph as a mining claim, the same was invalid, for the reason that the said attempted location was made on behalf of said defend-

ant by said Lindsay in, over and upon the Lotta patented claim and the Parish No. 2 mining claim, being the same Lotta and Parish No. 2 mentioned and described in the amended complaint herein, and said attempted and pretended location was made at the time that said Lotta was a patented claim, owned and held and in the actual possession of this plaintiff, and while the said Parish No. 2 was owned and held and in the actual possession of this plaintiff, by reason of prior discovery, location, marking of boundaries, posting and recording of notices and while the same was a valid and subsisting mining claim by reason of this plaintiff having complied with all the laws, rules and regulations with respect to performing the annual assessment work thereon, and said location was made for the purpose of harassing and annoying this plaintiff more particularly for the reasons hereinafter set forth in this reply, and also was and is an attempt of defendant to relocate a part of the old Oregon claim, which it has abandoned and forfeited as heretofore alleged in this reply. [90]

#### IV.

Referring to paragraph VI of the answer to the amended complaint herein, this plaintiff denies the same, and each and every portion thereof.

And this plaintiff replying to the answer of the defendant to the second cause of action set forth in the amended complaint, states and alleges as follows:

#### I.

That this plaintiff alleges it is a corporation as

stated in the amended complaint herein, and has been carrying on and conducting business in the District of Alaska as alleged in the said amended complaint and set out herein; has dealt with said corporation during said period of time as a corporation, recognizing its legal existence and capacity to hold property and do and transact business in Alaska.

## II.

Referring to paragraph III of the answer to the second cause of action herein, this plaintiff denies the same and each and every portion thereof, and states further in respect to said paragraph that if the said J. P. Corbus ever did undertake to make a location of a mining claim called the Oregon, that said attempted location was made on behalf of and for the said defendant and was attempted to be made over, in and upon the mining claims belonging to the plaintiff set out and described in the amended complaint herein, and was attempted to be made over, in and upon said claims or some portion thereof while the plaintiff herein, or its predecessors in interest or grantors, were the owners and in possession of each and all of said claims and after the said Lotto claim, set forth and described in the [91] amended complaint herein, was patented and while the said Parish No. 2 lode mining claim described in the amended complaint were valid and subsisting claims, held, owned and possessed by the plaintiff herein or its grantors, by reason of prior discovery, location, staking and marking of the boundaries, posting of notice, and recording of the

same and by a full compliance with the laws of the United States pertaining to the performance of annual assessment work thereon, and that if said Corbus ever attempted to locate the premises described in the answer as the Oregon claim for or on behalf of himself or said defendant, the said attempted location and said claim to the premises described in said answer as the Oregon claim were afterwards abandoned and forfeited by reason of said defendant and its agent and representative, Corbus, failing in all respects to comply with the laws of the United States and local customs, rules and regulations pertaining to the performance of the annual assessment work on said pretended lode mining claim; that the said defendant, nor its predecessors in interest, nor the said Corbus, never performed any assessment work on said claim whatsoever, and never attempted to comply with the law in regard to performing the necessary annual assessment work on said pretended location.

And this plaintiff further alleges that if the said R. G. Datson, mentioned in said paragraph, ever attempted to make any location of what is termed the Oregon lode mining claim in the year 1910, that said Datson attempted to make the same on behalf of the said defendant herein, and any and all attempted locations made by the said Datson were in, over and upon the property, mining claims and premises owned and possessed by the [92] plaintiff herein, as set forth and described in the amended complaint, and was an attempt to make a location over, in and upon the Lotta patented claim, the



Taku Gold and Silver claim, patented, and the Parish No. 2 lode mining claim, the latter mining claims being prior, subsisting and valid locations, owned, held and possessed by this plaintiff by reason of prior discovery, location marking on the ground, posting and recording of notices and in full compliance with the laws of the United States in respect to holding mineral land and in complying with the law, local rules and regulations pertaining to the performance of annual assessment work thereon, and was an attempt made by the said Datson on behalf of said defendant company to relocate the said pretended Oregon claim as located by the said Corbus, in the manner hereinbefore set forth, and said attempted location by said Datson on the part of said defendant was false, fictitious and void, and was made, as this plaintiff verily believes, to harrass and annoy said plaintiff and becloud the title to its said property.

### III.

Referring to paragraph IV of the answer to the second cause of action herein, this plaintiff denies the same and each and every portion thereof, and alleges that if said defendant is the owner and possessed of a certain patented mining claim known as United States Survey 641 and termed the Colorado claim, the only premises or property that was ever patented by reason of said instrument and the only ground that was ever patented by virtue of said survey as described and located upon the ground by the monuments and actual measurements, irrespective

[93] of anything that may be asserted in said patent, is bounded and described as follows, to wit:

Beginning with Corner No. 1 of the Colorado lode, Survey No. 641, identical with Corner No. 4 of the Royal, Survey No. 238; thence south  $58^{\circ} 24'$  west 86.30 feet to Corner No. 2, identical with Corner No. 2 of the Nevada lode, Survey No. 612; thence south  $39^{\circ} 06'$  east 34.96 feet to Corner No. 3; thence North  $88^{\circ} 30'$  west 1123.16 feet to Corner No. 4, identical with Corner No. 1 of the Idaho Placer, Survey No. 641; thence north  $31^{\circ} 36'$  west 600 feet to Corner No. 5, identical with Corner No. 6 Idaho Placer, Survey No. 641 and Corner No. 3 Last Chance Placer, Survey No. 142; thence south  $88^{\circ} 54'$  east 1215.12 feet to Corner No. 6 on line 5-4 Royal lode, Survey No. 238, whence Corner No. 5 Royal lode bears north  $31^{\circ} 36'$  west 567.64 feet; thence south  $31^{\circ} 36'$  east 522.36 feet to Corner No. 1, the place of beginning.

That said Colorado claim was patented as a subsequent and junior mining claim to the other mining claims which it lies between, and only as a matter of fact contains the ground embraced within the exterior boundary lines above described and set forth.

#### IV.

Referring to paragraph V of the answer to the second cause of action herein this plaintiff denies the same and each and every portion thereof, and alleges that if the said Lindsay mentioned in said paragraph did attempt to make a location of the premises described in said paragraph as a mining claim, the

same was invalid, for the reason that the said attempted location was made on behalf of said defendant by said Lindsay in, over and [94] upon the Lotta patented claim and the Parish No. 2 mining claim, being the same Lotta and Parish No. 2 mentioned and described in the amended complaint herein, and said attempted and pretended location was made at the time that said Lotta was a patented claim, owned and held and in the actual possession of this plaintiff and while the said Parish No. 2 was owned and held and in the actual possession of this plaintiff, by reason of prior discovery, location, marking of boundaries, posting and recording of notices and while the same was a valid and subsisting mining claim, by reason of this plaintiff having complied with all the laws, rules and regulations with respect to performing the annual assessment work thereon, and said location was made for the purpose of harassing and annoying this plaintiff, more particularly for the reasons hereinafter set forth in this reply, and also was and is an attempt of defendant to relocate a part of the old Oregon claim, which it has abandoned and forfeited as heretofore alleged in this reply.

## V.

Referring to paragraph VI of defendant's amended and supplemental answer this plaintiff denies the same and each and every allegation therein contained.

Referring to the further answer of defendant to the second cause of action stated in the amended complaint, this plaintiff admits, denies and alleges as follows:

## I.

Referring to paragraph I thereof, this plaintiff has not knowledge or information sufficient to form a belief as to [95] the matters and facts set forth therein, and therefore denies the same and each and every portion thereof.

## II.

Referring to paragraph II of the said further answer, this plaintiff denies the same and each and every portion thereof, except in so far as it has been in this reply or may be hereafter admitted, modified or explained. And in connection with said paragraph and the matters set forth therein this plaintiff further alleges, that if the said L. D. Mulligan ever posted a notice of the kind and nature set forth on page 10 of said answer, purporting to be dated August 1, 1910, that said notice was posted at a point fully 150 feet up Gold Creek from where the defendant has constructed its dam and was posted near the center of the patented Lotta lode claim herein referred to, and said notice and all work thereunder was abandoned by the said defendant and was never of any validity as a water notice and was posted upon the patented ground of this plaintiff company, and for said reasons mentioned herein was absolutely void both in law and in fact.

This plaintiff referring to said paragraph and the pretended amended location notice of appropriation of water, which commences on page 13 and ends on page 15, alleges, that if any such notice was ever made out and posted by the said defendant and was posted as indicated in said notice, it was posted at a



distance down the creek from the original notice which the said Mulligan claimed he posted, a distance of about 150 or 200 feet, and was either on the Lotta patented claim or the Parish No. 2 mining claim, property of this plaintiff company, and that said pretended notice, if posted and recorded as is claimed by the defendant, [96] is of no validity whatever as a water location or as an amended water location, for the reasons set forth herein.

### III.

Referring to paragraph III of said last-mentioned answer, this plaintiff denies the same and each and every portion thereof, except that said flume and ditch referred to therein is constructed across a part of and in part over the Parish No. 2 claim and was so constructed in the manner hereinafter set forth.

### IV.

Referring to paragraph IV, this plaintiff admits that the Parish No. 2 mining claim is an unpatented claim, but denies each and every other portion, part and remaining allegation of said fourth paragraph.

### V.

Referring to paragraph V of said last-mentioned answer, this plaintiff denies the same and each and every portion thereof.

### VI.

Referring to paragraph VI of said answer, this plaintiff denies that the pretended rules and regulations set forth in said paragraph are now or ever have been in force since either party to this action sought to acquire title to any of the property described and set forth in the pleadings herein; denies that any such rules and regulations ever have been

universally or otherwise observed by the miners of the Harris Mining District, at this time or any other time, or that they are now or ever have been in force and effect; as to the remaining portions of said paragraph VI, this plaintiff has not knowledge or information [97] sufficient to form a belief as to the matters and facts set forth therein, and therefore denies the same and each and every portion thereof.

And this plaintiff further alleges in connection with the matters and facts set forth in said paragraph, that if any such mining rules or regulations were ever in existence, they were specially repealed by the Act of May 17, 1884, being an Act entitled "An Act Providing a Civil Government for Alaska," 23 Stats. at Large, which provided for the organization of a civil government in Alaska, the extension thereof of the laws of Oregon and in section 8 as follows: "And the laws of the United States relating to mining claims and the rights incident thereto shall, from and after the passage of the act, be in full force and effect in said district under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President."

And if any such mining rules or regulations as set forth in said paragraph ever existed or were in force, they fell into utter disuse and were abandoned before either party to this suit ever made any claim to any of the unpatented land or mining claims in dispute in this action, and any of said mining rules so set forth therein that are inconsistent with the general laws of the United States are of no force or effect whatsoever.

That none of said rules or regulations that are inconsistent with the laws of the United States have ever been recognized by the Courts of the District of Alaska since either party to this action made any claim to the property in dispute herein; in fact, the Courts have held that if any such rules and regulations ever did exist, that they fell into disuse long before [98] either the plaintiff or the defendant in this suit made any claim to the property in dispute herein, and particularly so was it held in the case of *McFarland et al. vs. The Alaska Perseverance Mining Co.*, No. 510-A of this court, by Judge James Wickersham, the presiding Judge, and which opinion is on file in said cause; the said cause was afterwards appealed to the Circuit Court of Appeals and the decision of the said Wickersham affirmed. Said opinion was rendered by the said Wickersham on June 3, 1907, and was over mining property and water rights within what the defendant herein terms the Harris Mining District and within a short distance from the property in dispute in this suit.

## VII.

Referring to paragraph VII of said answer, this plaintiff denies the same and each and every portion thereof, and states that if any of said customs mentioned in said paragraph ever existed, the same, by reason of the facts set forth in paragraph VI of this Reply, were repealed and are of no force and effect, and had fallen into utter disuse before ever either of the parties herein made any claim to the mining claims or any water or water rights as set forth in said answer.

## VIII.

Referring to paragraph VIII of said answer, this plaintiff denies the same and each and every portion thereof.

## IX.

Referring to paragraph IX of said answer, this plaintiff denies the same and each and every portion thereof.

And further by the way of affirmative matter as a defense [99] to the matters and facts set forth in the amended and supplemental answer to the amended complaint herein, this plaintiff alleges:

## I.

That it is a corporation organized and existing as heretofore alleged in this reply, and said allegations respecting said corporation are hereby referred to and made a part of this part of this reply.

## II.

That this plaintiff is a corporation organized as hereinbefore stated and came into existence in the year 1895, and at that time and since that time has become the owner and has been in possession of a group of quartz mines and mining claims in what is termed the Harris Mining District, on Gold Creek, a distance of about one mile from the town of Juneau; all of which said claims are contiguous and adjacent to each other, with no intervening ground or mining claims owned or possessed by any other person or corporation; and said group consists of the Lotta patented claim, set forth in the complaint herein, and some seven or eight other patented claims and the Parish No. 2 and Parish, two unpatented



claims referred to in the complaint herein, together with several other unpatented claims and several mill sites.

That the creek known as Gold Creek and referred to in the pleadings herein runs through and across said mining claims for a distance of about three-quarters of a mile.

That before this plaintiff company became the owner and possessed of said mining claims and mill sites, some of the said claims had been owned and possessed by this plaintiff's predecessors [100] in interest and grantors, and they had erected on one of said claims or mill sites, at or near the upper end of said group on Gold Creek, a ten-stamp mill and were engaged for several years before this plaintiff became the owner of said property in opening up and developing said mining claims and in mining and milling the ore therefrom, and had all the necessary machinery and equipment for mining and milling the ore in said ten-stamp mill and did run and operate said mill for several years prior to this plaintiff becoming the owner of said property and used the water of Gold Creek for the purpose of generating power, in opening up and developing said mines and milling said ore, and said creek was tapped by the intake of the predecessors in interest and grantors of this plaintiff at a point just above the mill, which said mill is located on the right-hand bank going up the creek.

### III.

That about the year of 1895, upon the organization of this plaintiff as a corporation, the property above

described, except a few locations that have been made since then, were conveyed to said corporation.

That the locations that have been made by and on behalf of this plaintiff, or conveyed to it, since said date are the Parish No. 2 claim and Parish, and which was located by William M. Ebner on the 24th day of October, 1899, and afterwards and on the 29th day of March, 1906, conveyed by the said Ebner to this plaintiff; conveyed to this plaintiff, and ever since said date said two mining claims have formed a part of the group of the property referred to herein as the plaintiff's property on [101] Gold Creek; and said plaintiff has been in the open, notorious and actual possession of all of said property during all of said times mentioned herein and ever since the conveyance of said Parish No. 2 and the Parish to it, and ever since it first became the owner of said property in 1895, has been continuously engaged in opening up and developing and mining of its said property, milling its ore with its said 15-stamp mill, and has built and constructed necessary ore-bunkers, an air-compressor and all necessary buildings, and had the necessary machinery placed thereon for the working of said mines in a good workmanlike style and fashion, and has been using the water of Gold Creek at all of said times to generate power therefore.

#### IV.

That in contemplation of the increasing of the facilities to open up, develop and mine said property and the milling of said ores, this plaintiff located, or caused to be located, for itself and successors in interest, ten thousand additional miner's inches of water

of Gold Creek, on the 20th day of June, 1910, which said location was made by H. T. Tripp for and on behalf of this plaintiff and its successors in interest and afterwards recorded in the recorder's office at Juneau, Alaska, that being the Recording District, in which said mining property is situated, and which said location notice reads as follows, to wit:

“Location of Water.”

“Notice is hereby given to all whom it may concern that I the undersigned claim 10 thousand miner's inches of the water flowing in this creek or any part of 10 thousand miner's inches that may be flowing at any season of the year to be conveyed by ditch, flume or pipe along the bank of Gold Creek on the [102] southerly side or to cross the creek with pipe or flume or both to any place on the property known as the Ebner Mine or to carry across or further then the limits of the said mine property. This location is made on the ground this day and date and is posted at the place known as the Ebner Dam about  $1\frac{3}{4}$  miles up from Juneau, Alaska, on Gold Creek.

“Dated this 20th day of June, 1910.

“Time 7:30 A. M.

“Locator — H. T. TRIPP.

“Witness:

“JOHN SOINI.”

V.

That at the time of making said water location it was also in contemplation of this plaintiff and its successors in interest to build a 20-stamp mill at the lower end of its property on the left bank of Gold Creek going up said Creek, on the Cape Horn lode

mining claim, and to convey the water from a point on Gold Creek at or near where said notice was posted to said new mill and to such other points on Gold Creek as were necessary for the prosecution of the work of mining said property and milling the ores therefrom, and that in pursuance of said plan a survey was commenced on or about the last of July, 1910, of a flume-line from the point on Gold Creek at which said notice was posted to the mill site, a distance of about 4,000 feet; all of which was done prior to any pretended location of water of Gold Creek by the defendant. That said work of enlarging the facilities and increasing the capacity of the mill for the purpose of mining said property and treating the ores therefrom was, and has been, continuously kept up from the time of commencing the same to the present time, and [103] up to the present time the said flume-line has been about completed, being built upon the left bank of Gold Creek going up said creek, and is a flume three feet by four feet and over 4,000 feet long, with a capacity to carry over — miner's inches of water, and the excavation for the foundation of said mill has been nearly completed and the timber frames for a 200-stamp mill shipped and now on the ground at Juneau, which includes timbers for the mill building, ore-bins and batteries; that part of the machinery for said mill has also been purchased and shipped and is on the ground at Juneau, as well as a 20-drill compressor plant, and a tunnel run from the proposed site of the new mill in and through said mining property for a distance of 400 or 500 feet, which said tunnel is 8 feet by 8 feet, and is intended



for the purpose of opening up the ore bodies to be milled and treated by said 200-stamp mill. That during all of said time and from the commencement of said work and down to the present time there has been kept employed on said property from 20 to 60 men constructing the flume and performing other necessary work for the completion of said undertaking.

## VI.

That while said work of plaintiff was progressing as aforesaid, the said defendant, by its officers, agents and representatives, attempted to wrongfully enter upon the said Lotta patented lode mining claim and the Parish No. 2 lode mining claim and take possession of a portion of said mining claims against the will and consent of this plaintiff, and in order to prevent said wrongful entry and trespass upon said mining claims by said defendant, its agents and representatives, this plaintiff [104] commenced an action, being Cause No. 803-A of this court, and made application for a temporary restraining order, restraining the said defendant from trespassing upon the property of this defendant, and especially the Lotta patented claim and the Parish No. 2 mining claim; that upon the hearing thereof this Court refused said restraining order upon the grounds that there was a dispute as to the title to the property in controversy, and that the plaintiff could suffer no irreparable damages by reason of the acts complained of, and that plaintiff's remedy would be by an action in ejectment.

## VII.

That thereafter and on or about the 28th day of

September, 1910, while the work above mentioned was in progress, and while this plaintiff, by its representatives or agents, was in the actual possession of the said Lotta patented mining claim mentioned herein, and performing work thereon in the building of trails, etc., the said defendant by its officers, agents and employees, attempted to go upon the said Lotta patented claim and to construct and build a dam in Gold Creek on said claim and about the center of said claim, and they were requested and ordered to depart from said premises by the representatives of this plaintiff, and they did so depart and move away from said premises, but again, and on, to wit, the 3d day of October, 1910, and while the said plaintiff and its agents and representatives were in the actual possession of said Lotta patented claim and also of the Parish No. 2 lode mining claim, and engaged in work upon said claims, again enter in and upon said Lotta and Parish No. 2 lode mining claims at a point near the boundary of said Lotta [105] and Parish No. 2 mining claims, and undertook to build a dam across said creek and to divert the water therefrom, which undertaking was resisted by the representatives and agents of this plaintiff, and the said defendant company, through its agents, officers and representatives, thereupon caused the representatives and agents of this plaintiff who had been resisting the entry of said officers and agents of said defendant upon said Lotta and Parish No. 2 lode mining claims, to be arrested by the United States Marshal on John Doe warrants, which were issued on John Doe complaints

filed with the United States Commissioner, verified by an officer and representative of said defendant company, and while the agents and representatives of plaintiff were in the custody of the said United States Marshal, the said representatives, agents and employees of the said defendant company partially constructed their dam across Gold Creek sufficiently to make a pretended diversion of some water of Gold Creek into a short piece of timber flume, which had hastily been constructed by the employees of the said defendant company. That after said arrests were made and the work above resisted accomplished by the defendant company, the representatives and agents of this plaintiff returned to said Lotta and Parish No. 2 lode mining claims and proceeded with their said work, especially the running of a tunnel for the opening up of the Parish No. 2 mining claim at a point on the right hand of Gold Creek going up said creek at an altitude of about — feet above the bed of the creek on the hillside; that in running said tunnel the debris and much was dumped therefrom down said hillside into said Gold Creek, but all of such work and dumping was done upon said Parish No. 2 lode mining claim. That this plaintiff failing to obtain [106] a restraining order as above set forth, the said defendant continued its said work of building and constructing a timber flume in and over the said Parish No. 2 lode mining claim, and when they reached a point in the construction of their said flume on the hillside on the right bank of said Gold Creek just below the mouth of the tunnel that was

being run by this plaintiff as aforesaid, and where this plaintiff had been dumping, the said defendant did, by its officers and agents, again cause the representatives of this plaintiff, who were engaged in the work of running said tunnel and dumping as aforesaid, to be arrested in the same manner and form as the arrests first hereinbefore referred to, and while said representatives and agents of this plaintiff were in the custody of said United States Marshal, the said defendant, connected up its said timber flume and thus crossed the said Parish No. 2 lode mining claim. That the entry of said defendant in and upon and over the ground and mining claims of this plaintiff was at all times resisted by the plaintiff and the same was a wrongful and forcible entry and against the will and consent of said plaintiff, and the only possession that said defendant ever gained of any part or portion of said Parish No. 2 or the Lotta patented claim was made in a forcible manner as herein described, and this action is brought to oust said defendant from such possession.

WHEREFORE, this plaintiff prays for the relief demanded in the amended complaint herein.

WINN & BURTON,  
Attorneys for Plaintiff."

That thereafter the plaintiff made a motion in open court and asked to dismiss the third cause of action in the Amended [107] Complaint, on the ground that the title to the Cape Horn mining claim, set up and described in said third cause of action, was in William M. Ebner and not in the Ebner Gold



Mining Company. Whereupon the Court made and entered the following Order, to wit:

*“In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

ORDER (DISMISSING THIRD CAUSE OF  
ACTION OF AMENDED COMPLAINT  
WITHOUT PREJUDICE).

Upon motion made by counsel for plaintiff in the above-entitled cause, in open court, in the presence of counsel representing the above-named defendant in said above-entitled cause, that the third cause of action set forth in the amended complaint herein be dismissed without prejudice, for the reason that upon an examination of the records of title it had been ascertained that the title to the Cape Horn Lode Mining Claim set up and described in said third cause of action in said amended complaint was in William M. Ebner and not in the Ebner Mining Company, the party plaintiff herein;

And the Court being fully advised in the premises, IT IS ORDERED that said third cause of action in said amended complaint herein be, and the same is hereby, dismissed without prejudice to the bring-

ing or commencement of another suit for the same cause or subject matter of said action.

Done in open court this 24th day of May, A. D. 1911.

EDWARD E. CUSHMAN,  
Judge." [108]

That thereafter the defendant waived the defense of another action pending, as set up in the Answer, and the cause was duly and regularly set down for trial, and further that the Court made an order in relation to a request to amend the Answer, which said Order is in words and figures as follows:

*"In the District Court for the District of Alaska,  
Division No. One, at Juneau.*

Case No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

ORDER (ALLOWING INSERTION OF MAT-  
TER ON PAGE 4 OF ANSWER).

This matter coming on on application of the defendant, the Court being fully advised, HEREBY ORDER that the following be inserted in the answer of the defendant herein on page 4, immediately following paragraph 2 of the defendant's answer to the second cause of action:

" '2d-b. And defendant further alleges as a

further defense to said second cause of action that if the plaintiff ever acquired any interest in premises and mining claims set forth in said second cause of action, neither the plaintiff nor any of his grantors or predecessors in interest did or performed or caused to be performed any work, labor or improvements of any kind and nature or description, upon or for the use and benefit of said Parish No. 2 lode claim under or by virtue of said alleged locations of plaintiff, and that plaintiff and [109] his grantors wholly failed and neglected to represent said claim or resume work thereon until long after the water and mining locations of defendant as hereinafter set forth and have failed to record the affidavit of annual labor and improvements required by statute and thereby the plaintiff's claim, if any he had, became and was actually forfeited.' "

Done in open court this 9th day of June, 1911.

EDWARD E. CUSHMAN,  
Judge."

That upon the issues so framed the cause went to trial and was duly and regularly tried before the Court. Whereupon the Court made and entered its Findings of Fact and Conclusions of Law, which are in words and figures as follows:

*In the District Court for the District of Alaska,  
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF  
LAW.

This cause having heretofore come on for hearing upon the issues made by the amended complaint, the amended and supplemental answer and the reply to said amended and supplemental answer, a jury having been by the respective parties expressly waived plaintiff having introduced all of its testimony and rested its case, and the defendant having introduced all of its testimony and rested its case; plaintiff having introduced its rebuttal testimony and defendant having introduced its sur-rebuttal testimony, [110] both parties having rested and argument of counsel representing the respective parties having been made, and the Court being fully advised in the premises, finds:

1. That the plaintiff, Ebner Gold Mining Company, is a corporation organized December 5, 1895, and existing under and by virtue of the laws of the United States provided for the District of Alaska;



and is authorized to do and has been engaged in and doing a general mining business in said district for over fifteen years. Said plaintiff corporation is entitled to hold, deal in and acquire title from the United States to mineral lands and been qualified so to do at all times mentioned in the amended complaint herein.

2. That the defendant is a corporation duly organized and doing business in the District of Alaska.

3. The Court further finds that the plaintiff is now and has been for several years last past seized in fee and possessed and entitled to the possession of that certain patented lode mining claim situated in the Harris Mining District, District of Alaska, namely, the Lotta lode mining claim, United States Mineral Survey No. 87, more particularly described as follows, to wit:

Beginning at Corner No. 1 Lotta lode claim (patented), a post at the NW. center end of claim; thence north  $57^{\circ} 24'$  east 150 feet to Corner No. 2; thence south  $31^{\circ} 36'$  east 1500 feet to Corner No. 3, identical with Corner No. 5 Taku Gold and Silver lode claim, Survey No. 88, patented, and Corner No. 1 Royal lode Survey No. 238, patented; thence south  $57^{\circ} 24'$  west [111] 150 feet to southeast center end of Lotta Lode, 300 feet to Corner No. 5, identical with Corner No. 5, Royal Lode, Survey No. 238, patented; thence east side doorway of old cabin, bears north  $5^{\circ} 7'$  east 96.2 feet distance; thence north  $31^{\circ} 36'$  west 1500 feet to Corner No. 6; thence north  $57^{\circ} 24'$  east 150 feet to NW. center

end and place of beginning. Mag. Var. of all courses from a true meridian  $32^{\circ}$  east of north.

4. That while plaintiff was the owner of such mining claim and seized and possessed thereof, the defendant, early in August, 1910, without right or title, entered into possession of part of said Lotta mining claim and without right or title thereafter constructed thereon a portion of a certain dam, with structures accessory thereto, for the purpose of diverting the waters of Gold Creek flowing in, through and over said Lotta lode mining claim, and ousted and ejected plaintiff therefrom, and now wrongfully and unlawfully withholds the possession thereof from the plaintiff.

5. That the plaintiff is not and never has been seized, possessed or entitled to the possession of that certain tract of ground described in paragraph 3 of the plaintiff's second cause of action, set forth in the amended complaint herein, and known and referred to as the Parrish #2 lode mining claim. That the ground claimed by the plaintiff as the Parrish #2 lode mining claim was located solely for purposes of convenience; that no discovery of mineral-bearing rock in place, of any value, was ever made by the plaintiff or its grantors, nor any indication or evidence of such as could or would warrant or justify one in spending time, work or money in its development or in the expectation of finding ore.

[112]

6. The Court further finds that no assessment work required by law to the extent of \$100 each year has been performed or caused to be performed

in labor and improvements of any kind or for the benefit and use of said Parrish #2 claim prior to the year 1909, and that the plaintiff and its grantors failed and neglected to sufficiently represent said claim during the years prior to 1909, after its attempted location in 1899.

The Court further finds that the annual assessment work and labor required by law has been done and performed upon the Parrish #2 lode mining claim for the years 1909 and 1910 and within the time in each of said years required by law, providing the same was a valid and subsisting mining claim, based upon a valid location.

7. The Court further finds that about the first day of August, 1910, while the waters of Gold Creek were flowing in their usual channel, L. D. Mulligan, acting as the agent and employee of the defendant, posted a notice upon the property in controversy, said notice reciting the location by him of 20,000 miner's inches of the unappropriated waters of Gold Creek.

That thereafter the defendant proceeded to erect part of a dam and construct a flume upon the public domain, which flume and a portion of said dam were on, over and across the property claimed by the plaintiff as the Parrish #2 lode mining claim, and that at the time of said location and erection of said dam and flume and the diversion and appropriation of said water, the said property so described as the Parrish #2 lode mining claim was a part of the unoccupied, unsegregated [113] public domain of the United States, and that said flume

extends across the said property indicated upon the map on file herein, known as Defendant's Exhibit #7, which for the purposes of description is made a part of this finding.

8. The Court finds that under the custom of miners which was and is generally observed by the miners of the Harris and surrounding mining districts, the Harris Mining District being the mining district in which all the property and property rights in controversy are situated, the appropriator of water has uniformly exercised the claimed right, without opposition, to build ditches and canals across unpatented mining claims owned and held by persons other than the appropriator, in order to convey water to the place of intended use, whether such water is diverted from the stream on the mining claim or such other or beyond the same.

9. The Court further finds that under the custom of miners, recognized by the miners of the district within which the property in controversy is situated, the riparian proprietor has no right to the use of the water of the running streams by reason of such riparian ownership as against a prior appropriator, and the Court further finds that under the customs of miners observed by the miners of the district in which the property in dispute is situated, rights to the use of the waters of running streams may be acquired by diversion, appropriation and application to beneficial use. That the defendant went upon the property in controversy to construct a dam and flume for the purpose of diverting and appropriating water for use in furnishing [114] power



in connection with the operation of a stamp-mill to be constructed by it and for other uses in connection with the operation of its mines in Silver Bow Basin, within the district drained by said Gold Creek.

10. The Court further finds that the Oregon mining claim referred to in defendant's answer as located by J. P. Corbus and the Oregon mining claim as located by R. G. Datson were each made solely for the purposes of convenience; that no discovery of mineral-bearing rock in place, of any value, was ever made by the defendant or its grantors, or at all, on either of said claims, nor any indication or evidence of such as would warrant or justify one in spending time, work or money in the development of either of such claims or with the expectation of finding ore.

11. The Court further finds that the Canyon mining claim is based upon a discovery within the boundary of the Lotta patented mining claim above described, and that said location is void and without effect.

And the Court concludes as a matter of Law:

1. That the plaintiff is entitled to the possession of the Lotta mining claim and is the owner thereof as staked upon the ground and described in plaintiff's amended complaint, and is entitled to a decree ousting the defendant therefrom.

2. That the plaintiff is entitled to a writ of restitution and a writ of ejectment herein restoring the plaintiff to the possession of the Lotta patented claim as more particularly set out in the Findings

of Fact herein, said writ of [115] ejectment to eject the defendant, its officers, agents and employees from said premises and each and every portion thereof.

3. That the location known as the Parrish #2 lode mining claim is void and of no effect.

4. That the locations known as the Oregon lode mining claim, located by R. G. Datson, and the Oregon lode mining claim, located by J. P. Corbus, and the Canyon lode mining claim, located by W. R. Lindsay, are void and of no effect.

5. The Court further concludes that neither of the parties is entitled to recover costs in this suit.

Done in open court this 5th day of July, 1911,  
*nunc pro tunc* as of June 12, 1911.

EDWARD E. CUSHMAN,  
Judge."

And thereafter on the 5th day of July, 1911, the Court duly made and entered its final decree in said cause, which is in words and figures as follows:

*"In the District Court for the District of Alaska,  
Division No. One, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corpora-  
tion,

Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

## JUDGMENT AND DECREE.

This matter having come on for trial, plaintiff being represented by Messrs. Winn & Burton, the defendant by Messrs. [116] Hellenthal & Hellenenthal and Messrs. Shackelford & Bayless; evidence having been already taken, arguments heard and the cause submitted, and the Court having made its Findings of Fact and Conclusions of Law, and being fully advised in the premises:

IT IS ORDERED, ADJUDGED, CONSIDERED AND DECREED that the plaintiff have and recover of and from the defendant the possession of that certain lode mining claim known as the Lotta mining claim, United States Survey No. 87, and that the defendant be ejected from the possession of said mining claim, or so much of the same as it is in possession of, which said lode mining claim is particularly described as staked upon the ground and more particularly as follows, to wit:

Beginning at Corner No. 1 Lotta lode claim (patented) a post at the N. W. center end of claim; thence north  $57^{\circ} 24'$  east 150 feet to Corner No. 2; thence south  $31^{\circ} 36'$  east 1500 feet to Corner No. 3, identical with Corner No. 5 Taku Gold & Silver lode claim, Survey No. 88, patented, and Corner No. 1 Royal lode, Survey No. 238, patented; thence south  $57^{\circ} 24'$  west 150 feet to southeast center end of Lotta lode, 300 feet to Corner No. 5, identical with Corner No. 5 Royal lode, Survey No. 238, patented; whence east side doorway of old cabin bears north  $5^{\circ} 7'$  east 96.2 feet distance; thence north

31° 36' west 1500 feet Corner No. 6; thence north 57° 24' east 150 feet to NW. center end and place of beginning. Mag. Var. of all courses from a true meridian 32° east of north.

It is further CONSIDERED, ORDERED, ADJUDGED AND DECREED that [117] the plaintiff take nothing further by his complaint herein, and except as to the Lotta lode mining claim this cause and action be dismissed, without cost to either side.

The Court further retains and reserved jurisdiction in this cause for the purpose of supplementing, if the same hereafter appear necessary, this judgment with a fuller and more accurate description of the property referred to therein, and for the further purpose to determine to what exact extent the structures of the defendant are within the limits of the said Lotta lode mining claim therein referred to.

Done in open court this 5th day of July, 1911,  
*nunc pro tunc* as of June 12, 1911.

EDWARD E. CUSHMAN,

Judge."

That thereafter said cause was by the Ebner Gold Mining Company taken to the Circuit Court of Appeals for the Ninth Circuit on Writ of Error, whereupon, hearing duly had, the following Mandate was handed down:



**Mandate of U. S. Circuit Court of Appeals.**

UNITED STATES OF AMERICA,—ss.

To the Honorable the Judges of the District Court  
of the United States for the District of Alaska,  
Division No. 1, Greeting:

Whereas, lately in the District Court of the United States for the District of Alaska, Division No. 1, before you, or some of you, in a cause between Ebner Gold Mining Company, a Corporation, Plaintiff, and Alaska-Juneau Gold Mining Company, a Corporation, Defendant, No. 835-A, a Judgment and Decree was [118] duly filed on the 21st day of August, A. D. 1911, ordering, adjudging, considering and decreeing that the plaintiff have and recover of and from the defendant the possession of that certain lode mining claim known as the Lotta Mining claim, United States Survey No. 87, and that the defendant be ejected from the possession of said mining claim, or so much of the same as it is in possession of, etc.; which said Judgment and Decree is of record in the said cause in the office of the clerk of the said District Court (to which record reference is hereby made and the same is hereby expressly made a part hereof), as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of a writ of error prosecuted by Ebner Gold Mining Company, a Corporation, as Plaintiff in Error against Alaska-Juneau Gold Mining Company, a Corporation, as Defendant in Error, agree-

ably to the Act of Congress in such cases made and provided, fully and at large appears:

AND WHEREAS, on the 6th day of May, in the year of our Lord one thousand nine hundred and thirteen the said cause came on to be heard before the said Circuit Court of Appeals, on the said Transcript of the Record and was duly submitted;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, reversed, with costs in favor of the plaintiff in error and against the defendant in error, and the court below is directed to amend the judgment heretofore made by it by striking out the words "without cost [119] to either side," and substituting therefor words which will award costs to the plaintiff, and as thus amended the judgment shall stand affirmed.

It is further ordered and adjudged by this Court that the plaintiff in error recover against the defendant in error for its costs herein expended, and have execution therefor.

(January 5, 1914.)

YOU, THEREFORE, ARE HEREBY COMMANDED that such amendment, execution and further proceedings be had in the said cause in accordance with the opinion and judgment of this Court and as according to right and justice and the laws of the United States ought to be had, the said Judgment and Decree of said District Court notwithstanding.

Witness, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 13th day of February, in the year of our Lord one thousand nine hundred and fourteen.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

Amount of costs allowed and taxed in favor of the plaintiff in error and against the defendant in error as per Annexed Bill of Items, taxed \$3,358.05.

F. D. MONCKTON,  
Clerk."

That thereafter and on the 17th day of March, A. D. 1914, the following Judgment was entered in the District Court for the District of Alaska upon the Mandate so handed down by the Circuit Court of Appeals: [120]

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 835-A.

EBNER GOLD MINING COMPANY, a Corporation,  
Plaintiff,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,  
Defendant.

**Amended Judgment and Decree.**

WHEREAS, a judgment was rendered by the above-entitled court in the above-entitled cause on

the 5th day of July, 1911, and filed and entered with the clerk of this court on the 21st day of August, 1911, without costs to either side, and

WHEREAS, a writ of error was sued out to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, and said cause removed to said court and after a hearing had thereon, the said Appellate Court filed its opinion in said cause in said court and issued a mandate out of said cause on the thirteenth day of February, A. D. 1914, which said mandate is on file in this court and has been spread upon the records by the clerk of this court, and orders and directs this court to amend the judgment and decree heretofore entered in this cause by striking out the words "without costs to either side" and by inserting therein such word or words or phrases as will award costs in this court to the above-named plaintiff;

And this matter coming on for hearing on motion of the above-named plaintiff to have said judgment so amended, [121] modified and changed, and the Court being fully advised in the premises, and after examining said mandate, the judgment heretofore rendered in this court on the 5th day of July, A. D. 1911, and filed with the clerk of this court on the 21st day of August, 1911, is amended, modified and changed so as to read as follows:

#### JUDGMENT AND DECREE.

"This matter having come on for trial, plaintiff being represented by Messrs. Winn & Burton, the defendant by Messrs. Hellenthal & Hellenthal and Messrs. Shackleford & Bayless; evidence having



been already taken, arguments heard and the cause submitted, and the Court having made its Findings of Fact and Conclusions of Law, and being fully advised in the premises:

It is ORDERED, ADJUDGED, CONSIDERED AND DECREED, that the plaintiff have and recover of and from the defendant the possession of that certain lode mining claim known as the Lotta mining claim, United States Survey No. 87, and that the defendant be ejected from the possession of said mining claim, or so much of the same as it is in possession of, which said lode mining claim is particularly described as staked upon the ground and more particularly as follows, to wit:

Beginning at Corner No. 1 Lotta lode claim (patented), a post at the NW. center end of claim; thence north  $57^{\circ} 24'$  east; 50 feet to Corner No. 2; thence south  $31^{\circ} 36'$  east 1500 feet to Corner No. [122] 3, identical with Corner No. 5 Taku Gold & Silver lode claim, Survey No. 88, patented, and Corner No. 1 Royal lode, Survey No. 238, patented; thence south  $57^{\circ} 24'$  west 150 feet to southeast center end of Lotta lode, 300 feet to Corner No. 5, identical with Corner No. 5 Royal lode, Survey No. 238, patented; whence east side doorway of old cabin bears north  $5^{\circ} 7'$  east 96.2 feet distance; thence north  $31^{\circ} 36'$  west 1500 feet Corner No. 6; thence north  $57^{\circ} 24'$  east 150 feet to NW. center end and place of beginning. Mag. Var. of all courses from a true meridian  $32^{\circ}$  east of north.

It is further CONSIDERED, ORDERED, ADJUDGED AND DECREED that the plaintiff take nothing further by his complaint herein and except as to the Lotta lode mining claim this cause and action be dismissed *and plaintiff recover of and from the defendant its costs and disbursements herein to be taxed by the clerk of this court and that execution issue therefor.*

The Court further retains and reserves jurisdiction in this cause for the purpose of supplementing, if the same hereafter appear necessary, this judgment with a fuller and more accurate description of the property referred to therein, and for the further purpose to determine to what exact extent the structures of the defendant are within the limits of the said Lotta Lode Mining claim therein referred to.

AND IT FURTHER APPEARING from the mandate of the [123] United States Circuit Court of Appeals on file in this Court and herein referred to that the costs of said proceedings in said Appellate Court were and are taxed in favor of the plaintiff and against the defendant herein in the sum of \$3,358.05;

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover of and from the defendant herein the sum of \$3,358.05, being the amount of costs set forth in said mandate and the further sum of \$603.55 to be taxed by the clerk of this court, making a total sum of \$3,961.60 and that execution issue for the whole of said amount.

DONE IN OPEN COURT THIS 17th day of March, A. D. 1914.

ROBERT W. JENNINGS,  
Judge."

And said cause was thus finally determined and adjudicated and the final judgment rendered therein as above stated is still in full force and effect.

## VI.

The plaintiff further replying to the allegations of the answer of the defendant, alleges:

That at the time it caused its notice of appropriation of water to be posted on the banks of Gold Creek by L. D. Mulligan, to wit, on the 1st day of August, 1910, as stated in its complaint, it had no knowledge of the existence of any such notice as the notice referred to in the Answer as having been posted by H. T. Tripp on June 20, 1910, nor did it have any knowledge or information that would lead it to believe that any such notice had ever been posted, or ever had any existence, [124]

That said notice was not then recorded in the office of the recorder for the Juneau Recording District, the same being the district in which Gold Creek is situate, so that the plaintiff had no constructive notice of the fact that such notice had been posted, if it ever had been posted; that the defendant, The Alaska-Ebner Gold Mining Company was on the said first day of August, and for some time prior thereto had been, the owner of a group of lode mining claims situate along the banks of Gold Creek, which mining operations had been carried on on a small scale during previous years; that in this connection

a twenty-stamp mill had been constructed on the property and the waters of Gold Creek diverted and applied to use in connection with its operations, but the waters so diverted and applied were turned back into Gold Creek at a point a considerable distance above the plaintiff's present dam and intake, and the point where plaintiff's notice signed by L. D. Mulligan, as referred to in the complaint, was posted; that such operations had been for some time suspended and the property allowed to remain idle; that prior to August 1, 1910, however, steps had been taken by the said Ebner Gold Mining Company looking towards the operation of the property on a larger scale and in that connection a site for a new and enlarged mill was chosen by the said company, which said site was situate on the Lotta mining claim a considerable distance above the point where the plaintiff's dam was afterwards constructed and above the point where the notice of the said L. D. Mulligan was posted as stated in the complaint; that upon this site the said Ebner Gold Mining Company erected a [125] building in which to install and house the machinery and stamps necessary in order to complete its said contemplated larger mill, and made an excavation for use in connection with the still further enlargement of its said new mill, and a flume was built along the hillside from the Ebner dam to a point above the site where said mill building was so constructed. In addition to actually doing said work of construction as above indicated, the said Ebner Gold Mining Company acquainted the plaintiff company with its said plans for enlarged



mill construction; that if the waters of Gold Creek were applied and used in connection with the operation of a mill situate on the said Lotta claim, at or near the vicinity where the building for said larger mill was actually constructed, the same would be turned back into Gold Creek and allowed to flow in the natural channel of the creek a considerable distance above the point where the plaintiff's dam and intake was afterwards constructed and above the point where the notice of the said L. D. Mulligan was posted on August 1, 1910, as indicated in the complaint; that on the first day of August, 1910, and for a long time thereafter, the plaintiff had no knowledge or information that the said Ebner Gold Mining Company, or any other of the defendants herein, contemplated the construction or erection of a milling plant at any point other than the point on the Lotta Mining Claim above last referred to, where the work in connection with the construction of such plant had already been carried on, and the plaintiff then and for a long time thereafter believed that it was the intention of the said Ebner Gold Mining Company to erect a new and enlarged [126] mill on the point on the Lotta Mining Claim above referred to and to apply the waters of Gold Creek in connection with its operations and return the same to the stream before reaching the point where it was the intention of the plaintiff to divert the water, that is to say, the point immediately below the lower or most southerly line of the Lotta lode claim, where the plaintiff's dam was afterwards constructed. That the plaintiff relying upon the representations

so held out by the defendants, and on the first day of August, 1910, while said new mill building, said excavation and said flume line leading thereto were the only evidences by which the plaintiff could be guided in determining where it was the intention of the defendants to apply the waters of Gold Creek and while no work in connection with mill construction at any other point and when there were no indications that the defendants ever intended to convey the waters of Gold Creek to a point below the plaintiff's present intake, the plaintiff went upon the ground and located and appropriated its water right as alleged in the complaint and spent large sums of money in that connection. That the defendants' conduct in this regard was not only such as to preclude it, or either of them, from acquiring a water right in Gold Creek as against this plaintiff, but was such as to estop them and each of them from claiming the right to the use of such water as against this plaintiff.

In this connection the plaintiff further avers that neither the defendant, the Ebner Gold Mining Company, nor any of the other defendants, had on the said first day of August, 1910, nor for many days thereafter, decided to or formed any intention of constructing a milling plant at the point near [127] Shady Bend where the work of excavation referred to in the Answer was afterwards carried on. And further that none of the defendants herein, except the Ebner Gold Mining Company, owned any interest in any mining claims or other real property situate in the Harris Mining District, or anywhere in the

vicinity of the Territory through which Gold Creek flows, on the first day of August, 1910, or for a long time thereafter. That on the said first day of August, 1910, the Ebner Gold Mining Company was the owner of a group of mining claims generally known and referred to as "The Ebner Group"; that the most southerly claim belonging to said group and the claim furthestest down Gold Creek is and was the Lotta claim and the lower or southerly side line of said Lotta claim *form* the lowermost boundary of said group. The Ebner Gold Mining Company did not on the 20th day of June, 1910, the first of August, 1910, or at any other time or times referred to in the pleadings in this case, own or possess any mining claim, or other right or interest in property to the south of the said lower side line of the Lotta claim or further down the creek than the line marked by said lower side line of said Lotta claim, the ground upon which the excavations were afterwards made as alleged in the answer, with the alleged view of erecting a milling plant, being not then or at any other time herein mentioned the property of the Ebner Gold Mining Company. That the said site referred to in the Answer as the site for a new milling plant is so wholly unsuited for the purpose indicated, due to its situation immediately below a mountainside so situated that slides, which would demolish any structure placed thereon, may be expected at any time, that no one would be led to the belief that this site would be chosen as a [128] site for a milling plant.

In this connection it is averred that the plaintiff

does not believe it to be the intention of the defendants, or any of them, to erect a milling plant at this point, but believes that said site was selected solely because so situate that a large showing in the way of grading could be here made at comparatively little expense so as to facilitate the sale of stock. And in this connection it is further averred that no work looking either towards the grading of a site or the construction of a milling plant was carried on at this point by the defendants or any of them until long after the plaintiff had commenced work looking towards the appropriation of the waters of Gold Creek as averred in the complaint. And further, that no work of any character looking towards the appropriation of the waters of Gold Creek by the defendants, or any of them, for use at a point lower down the creek than the plaintiff's dam, was commenced or performed until long after the work done by the plaintiff looking towards the appropriation of the water was commenced as averred in the complaint.

For the several reasons herein stated, the notice posted by H. T. Tripp, as alleged in the answer, if the same was posted, a proceeding which the plaintiff had no knowledge or information of on the first of August, 1910, or for a long time thereafter, either actual or constructive, would not have apprised the plaintiff of any intention on the part of the defendants, or either or any of them, to convey the waters of Gold Creek and [129] apply the same to use at any point below the plaintiff's intake, and could not, even though the plaintiff had had knowledge



thereof, serve as a notice of any such intention.

WHEREFORE the plaintiff prays that the defendants, take nothing by reason of the matters set up in the Answer, and for judgment as in the complaint prayed for.

HELLENTHAL & HELLENTHAL,  
Attorneys for Plaintiff. [130]

United States of America,  
Territory of Alaska,—ss.

Robt. A. Kinzie, being first duly sworn, on oath, say: That I am the general superintendent of the Alaska-Juneau Gold Mining Company plaintiff in the above-entitled action; that I have read the foregoing Reply and know the contents thereof and believe the same to be true.

ROBT. A. KINZIE.

Subscribed and sworn to before me this 6th day of June, A. D. 1914.

[Notarial Seal] GUY McNAUGHTON,  
Notary Public for Alaska.

My commission expires Oct. 24, 1916.

Filed in the District Court, District of Alaska,  
First Division. Jun. 8, 1914. J. W. Bell, Clerk.  
By —————, Deputy.

[Endorsed]: Original No. 1074-A. In the District Court for the Territory of Alaska, Division No. 1. Alaska Juneau Gold Mining Company, a Corporation, Plaintiff, vs. Alaska Ebner Gold Mining Company, a Corporation et al., Defendant. Reply. Hellenthal & Hellenthal, Attorneys for Plaintiff. Office: Juneau, Alaska. [131]

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

No. 1074-A.

THE ALASKA JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE EBNER GOLD MINING COMPANY, a Cor-  
poration, THE ALASKA EBNER GOLD  
MINES COMPANY, a Corporation, ANGUS  
MACKEY, as Receiver for the ALASKA  
EBNER GOLD MINES COMPANY and  
DOWNIE D. MUIR,

Defendants.

**Motion for Leave to Amend Reply.**

Comes now the plaintiff and asks leave of Court to amend the Reply herein by interlineation, by adding after the word "effect," appearing on the fifth page at the close of the third allegation, the following:

"That all the things required by the above rules, in connection with the appropriation of water, are also required by the customs of the miners of the Harris Mining District, and under said customs a forfeiture results whenever any of such requirements are not complied with."

HELLENTHAL & HELLENTHAL,

Attorneys for Plaintiff.

Filed in the District Court, District of Alaska, First Division. Jul. 10, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy.

[Endorsed]: Original No. 1074—A. In the District Court for the Territory of Alaska, Division No. 1. The Alaska Juneau Gold Mining Company, a Corporation, Plaintiff, vs. The Ebner Gold Mining Company, a Corporation, The Alaska Ebner Gold Mines Company, a Corporation, Angus Mackey, as Receiver for the Alaska Ebner Gold Mines Company, and Downie D. Muir, Defendant. Motion. Hellenthal & Hellenthal, Attorneys for Plaintiff. Office, Juneau, Alaska. [132]

---

*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

Case No. 1074—A.

THE ALASKA JUNEAU GOLD MINING COMPANY, a Corporation,

Plaintiff,

vs.

THE EBNER GOLD MINING COMPANY, a Corporation, THE ALASKA EBNER GOLD MINES COMPANY, a Corporation, ANGUS MACKEY, as Receiver for the ALASKA EBNER GOLD MINES COMPANY and DOWNIE D. MUIR,

Defendants.

**Order Granting Leave to Amend Reply.**

This motion coming on to be heard on the motion of the plaintiff to amend the Reply by interlineation,

and the Court being fully advised in the premises, Orders that the permission to so amend the reply be granted, and the plaintiff is hereby permitted to interline the Reply by adding thereto after the word "effect," at the close of the third allegation on the fifth page, the following words:

"That all the things required by the above rules, in connection with the appropriation of water, are also required by the customs of the miners of the Harris Mining District, and under said customs a forfeiture results whenever any of such requirements are not complied with."

Defendant excepts and exception allowed.

ROBERT W. JENNINGS,  
District Judge.

Entered Court Journal No. J, page 520.

Filed in the District Court, District of Alaska, First Division. Jul. 13, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy.

[Endorsed]: Original No. 1074-A. In the District Court for the Territory of Alaska, Division No. 1. The Alaska Juneau Gold Mining Company, a Corporation, Plaintiff, vs. The Ebner Gold Mining Company, a Corporation, The Alaska Ebner Gold Mines Company, a Corporation, Angus Mackey, as Receiver for the Alaska Gold Mines Company and Downie D. Muir, Defendant. Order. Hellenthal & Hellenthal, Attorneys for Plaintiff. Office: Juneau, Alaska. [133]



*In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.*

No. 1074-A.

THE ALASKA JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Plaintiff,

vs.

THE EBNER GOLD MINING COMPANY, a Cor-  
poration, THE ALASKA EBNER GOLD  
MINES COMPANY, a Corporation, ANGUS  
MACKEY, as Receiver for the ALASKA  
EBNER GOLD MINES COMPANY and  
DOWNIE D. MUIR,

Defendants.

**Motion to Amend Reply.**

Comes now the plaintiff and asks leave of Court to amend its Reply by substituting in the place of that portion of the Reply commencing on page eight (8) at the beginning of the paragraph occurring near the center of said page and beginning with the words "Referring to paragraph ten" up to and including the second paragraph occurring on page nine (9) of said Reply and immediately preceding the words, "In this connection the Plaintiff avers," the following:

Referring especially to the allegations of paragraph ten (10) in the defendant's answer, the plaintiff denies that either it or the said L. D. Mulligan went upon the Lotta mining claim as a malicious or wilful or naked trespasser, or at all except as here-

inafter stated. And in this connection and in order to establish its good faith in the premises, the plaintiff avers:

That the point at which the said L. D. Mulligan posted the notice of water appropriation, as alleged in the complaint, is situate in wild and unoccupied territory; that the lower or southerly side line of the Lotta lode mining claim was not at the time the notice was so posted established or declared by a judicial decision or otherwise; that if said Lotta claim were surveyed and located upon the ground in accordance with [134], the field-notes contained in the patent thereof, starting from known and well established points in the vicinity, or by tying said claim to Gold Creek in the manner indicated in the patent of said claim, said tie being the only tie or call to natural objects given in the patent, the point where the notice was posted by the said Mulligan would be below and to the south of the lower side line of the Lotta claim and not on said claim.

In this connection the plaintiff further avers: That it was claimed that there were at that time upon the ground certain stakes intended to mark at least some of the corners of the Lotta mining claim upon the ground, but that the plaintiff was entirely without any knowledge concerning either the claim so made or the existence of such stakes, and that the only available means by which plaintiff could determine the location of the Lotta claim upon the ground *consist* in the field-notes given in the patent and such known, established and familiar objects as the corners of plaintiff's claims and other like points; that

the plaintiff consulted all the available data and used all the means at hand with a view of determining the southerly side line of the Lotta, and in so doing reached the conclusion in good faith that the same was situate upon the ground to the north of and above the point where the said notice of the said Mulligan was posted, so that the said last-mentioned point would not fall or be upon the Lotta claim; that the plaintiff thereupon with *bona fide* and honest intention of posting said notice to the south of and below the boundary of the said Lotta claim caused the same to be posted at the point where the same was posted by L. D. Mulligan; that shortly thereafter, its attention was directed to the fact that the Ebner Gold Mining Company, one of the defendants herein, claimed the southerly side line of the Lotta to be further to [135] the south, so that the said Mulligan notice as posted would fall upon the Lotta claim; that immediately upon being so advised the plaintiff formed the intention of diverting the water at the point below the line so claimed by the said Ebner Gold Mining Company as the southerly line of the Lotta claim, and afterward built its dam and intake at a point below the line so claimed as the southerly side line of the Lotta Claim by the said Ebner Gold Mining Company; that the southerly line of the Lotta lode mining claim was, after the notice was posted and after the plaintiff had built its dam and intake at the point where the same is now situate, declared and adjudicated to be marked by the stakes upon the ground above referred to, so that the point where the said Mulligan notice

was posted was determined to be upon the Lotta claim. The dam and intake of the plaintiff constructed upon the ground, however, was to the south of and below the southerly boundary of the Lotta claim as so established and not upon the said Lotta claim.”

And in this connection, the plaintiff asks that such amendment be made by interlineation or pasting over that portion of the Reply that is being amended, the averments above referred to.

HELLENTHAL & HELLENTHAL,  
Attorneys for Plaintiff.

Filed *ibe* District Court, District of Alaska, First Division. Jul. 17, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy.

[Endorsed]: Original No. 1074-A. In the District Court for the Territory of Alaska. Division No. 1. Alaska Juneau Gold Mining Co., Plaintiff, vs. The Ebner Gold Mining Co., et al., Defendant. Motion. Hellenthal & Hellenthal, Attorneys for Plaintiff. Office: Juneau, Alaska. [136]

---

*In the District Court for the District of Alaska,  
Division Number One, at Juneau.*

No. 1074-A.

THE ALASKA JUNEAU GOLD MINING COM-  
PANY, a Corporation,

vs.

THE EBNER GOLD MINING COMPANY, a Cor-  
poration, et al.



**Order Allowing Plaintiff to Amend Reply, etc.**

Upon consent of J. R. Winn, Esquire, of counsel for defendants, given in open court, J. A. Hellenthal, Esquire, of counsel for plaintiff, is allowed to amend the reply herein by interlineation or substitution of a page or pages, with leave to defendants' attorneys to move against the reply when so amended.

Done in open court, this 20th day of July, 1914.

(Entered Journal J, page 529.)

ROBERT W. JENNINGS,  
District Judge.    [137]

---

*In the United States District Court, for the District  
of Alaska, Division No. One.*

No. 1074-A.

ALASKA-JUNEAU GOLD MINING COMPANY,  
a Corporation,

Plaintiff,

vs.

EBNER GOLD MINING COMPANY et al.,  
Defendants.

**Opinion.**

JENNINGS, Judge:

Defendants claim that some sort of superior equity or right by relation to June 20, 1910, enures to them by reason of the rules of the old Harris Mining District and of the fact that on that date H. T. Tripp posted a notice claiming 10,000 inches of the water of Gold Creek.

There is no statute in Alaska *requiring* notices of

the location of water rights to be posted or recorded, although there is a statute *allowing* them to be recorded, but that statute says nothing as to the effect of a notice when posted or recorded.

Defendants maintain, however, that the customs and rules of the old Harris Mining District are in evidence and that the Court should take them into consideration and allow defendant's water right to date from that notice—conceding that the Court should take said customs and rules into consideration, [138] and proceeding so to do, it appears that Articles 6, 7, 8, 9 and 10 of said rules provides as follows:

“Art. 6. A person desiring to appropriate water must post a notice in writing, in a conspicuous place at the point of intended diversion, stating therein: First, he claims the water there flowing to the extent of (giving the number) inches, measured under a six-inch pressure; second, the purpose for which he claims it, and the place of intended use. A copy of the notice must within ten (10) days after it is posted be recorded in the books kept by the recorder of the district.”

“Art. 7. Within twenty days, during the working season, after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by rain or snow.”

“Art. 8. By completion is meant conducting the waters to the place of intended use.”

“Art. 9. By a compliance with the above rules the claimant’s right to the use of the water relates back to the time the notice was posted.”

“Art. 10. A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies therewith.”

It is apparent, by casual inspection of the Tripp notice that it fails to measure up to the requirements of Article VI—not only that but the evidence shows that during the twenty days after the notice was posted the claimant (or his grantees) did not “commence the excavation or construction of the works in which he intends to divert the water” as provided in Article VII—Article VII therefore was not complied with. As Article 6 and 7 were not complied with, defendants gain no priority by relation by reason of the Harris Mining District rules, for it is “By a compliance with the above rules the claimant’s right to the use of the water relates back to the time the notice was posted.”

Plaintiffs claim to have posted a notice on August 1, 1910—the Mulligan notice; even if they did, that notice [139] is as defective as the Tripp notice—Neither notice contains a statement of “the place of intended use.”

On the 17th of August, 1910, defendants posted and recorded another notice. This notice I leave out of consideration, because prior to that time plaintiffs had actually commenced work.

On the 8th day of May, 1911, plaintiffs posted another notice—This notice I leave out of consideration, because prior to that date defendants were openly prosecuting work on their flume.

Thus, so far as relation back by virtue of Harris District Mining Rules is concerned, there is left out of consideration all the posted notices which have appeared in the evidence.

No case has been cited, and I apprehend that none can be found, where a water right in the absence of compliance with a statute or with local rules or customs, relates back to a written notice as a notice, pure and simple, securing to the poster of such notice rights which he would not have unless he had taken steps equivalent to a written notice. Notwithstanding that, it does not follow that if a notice be posted, even in those states where there is no Statute or local custom or rule, the notice is of no effect whatsoever. Even in such cases the notice may have a very important effect, as evidence of the intention of the party posting it. This intention of the party is one of the vital elements that go to make up a valid appropriation of water. [140]

In the case of *McFarland vs. Perseverance Company* it is said by Judge Wickersham:

“To constitute a valid appropriation of water, three elements must always exist.

(1) An intent to apply it to some beneficial use existing at the time or contemplated in the future.

(2) The diversion from the natural channel by means of ditch, canal or other structure.



(3) The application of it, within a reasonable time, to some useful industry.”

And he cites in support thereof

Nevada Ditch Co. vs. Bennett, 30 Ore. 59;

Lowe vs. Rizor, 25 Ore. 557.

And, in 3 Alaska, 572, Miocene Ditch Co. vs. Cam-pion Mining Company, those three elements are again mentioned as being essentials to constitute a valid ap-propriation of water.

I think the statement of the essentiality of those three requirements may be considered as borne out by the authorities.

Now, the part that the notice would play under such circumstances, in jurisdiction where there is no Statute nor local rules, is this: It would go to estab-lish the first essential, to wit, intent—it would be evi-dence of the intent.

Miocene Ditch Co. vs. Mining Co., 3 Alaska,  
582;

Weil, Section 380.

“ “ 376.

Not only does the notice have the effect of furnish-ing evidence of the intent of the persons posting the notice, but it also serves this purpose: It gives warn-ing to others that somebody has got the intention of utilizing that water; in other words, it serves as a warning.

Weil, Section 374.

So that the part which the Tripp and Mulligan no-tice play in establishing whether or not the parties have a water right is that they may be taken as evi-dence of intent. [141]

So far as intent is concerned, I can attach no importance to the testimony that as long ago as ten years previous to August 1, 1910, the plaintiffs had determined that they would some day build a mill on the shores of Gastineau Channel and would immediately need and use the waters of Gold Creek—and that that was the best way to work the ore bodies belonging to plaintiffs—Plaintiff may have thought so—may have determined some day to carry out that plan. It is sufficient to say that if such was their plan and determination, for ten long years they kept all knowledge of it securely locked in their own breasts—neither stating it publicly, nor taking any outward visible steps to harness the waters of Gold Creek for the execution of their ultimate plan—They must have known during all those years that the waters of Gold Creek were liable to be appropriated by others to the full extent of the flow. Neither can I attach any importance to the testimony that prior to August 1st plaintiffs had secured a large number of claims over which they intended to lay out a flume line. It was not necessary that a person should actually own the land over which he wishes to lay a flume to convey water; and ground is taken up as a mining claim on the theory presumptively and primarily that, a discovery of gold having been made, it will justify the expenditure of time and money in further exploitation. So that I cannot see that the intent on the part of plaintiffs was manifested at an earlier date than the date of the Mulligan notice—August 1, 1910. But defendants had manifested intent by the Tripp notice of June 20, 1910. Thus it

appears that the defendants were prior in point of time in manifesting their intent. Defendants thus took the first step in notifying [142] the world of the intent to appropriate—they took the first step to warn others to keep off. They were what is called the first comers.

But intent alone is not sufficient, it must be followed by diligence to appropriate and intent and appropriation are not sufficient—that must in turn be followed by beneficial use.

In view of the fact that there is no Statute, and that neither side complied with any rules (at least until the rules had lost their efficacy, (if any they ever had) by reason of the fact that before such compliance the adversary had actually begun work), how have not the defendants the prior right if they manifested intent—first posted notice—first claimed—were first comers, and proceeded with diligence to appropriate and then with diligence to apply to a beneficial use? I think the manifesting of such intent is usually the first step to locate a mine or appropriate water, in a mining country.

The notice is a palpable and unequivocal outward sign of the intent to appropriate. In *Kimball vs. Gearhart*, 12 Cal., at page 49, the Court say:

“Thus is put in issue the very question of title, and this involves necessarily the due prosecution of the work after the appropriation, or, in other words, after the indication by some palpable and unequivocal outward sign of the intent to appropriate. The title to the water does not arise, as we have intimated before, from the manifesta-

tion of a purpose to take, but from the effectual prosecution of that purpose. This prosecution, therefore, is a necessary element of a title."

and on page 316:

"The right to the water does not *yet exist*, and *it may never vest*. The most that is *in esse*, is, a right to acquire, by reasonable diligence, a future right to the water." [143]

This case does not seem to depend upon any Statute or specially invoked rule. It is the law of appropriation. It is true that law was based on Miner's Rules, but those rules and customs in that regard were and are so well known that they are what might be termed the Common Law of Waters. They were the outgrowth of usage and are the foundation of the law of mines and of waters on the public domain.

First adopted in California, that usage and custom has spread to all the Western States. It had spread to this northern country.

That is the law of Alaska, irrespective of the rules of the Harris Mining District.

McFarland vs. Perseverance, 3 Alaska, 336.

If, after posting notice, work to appropriate be conducted with diligence and the application to a beneficial use be conducted with diligence, the ultimate actual appropriation will relate back to the notice—not because it is a piece of paper tacked to a stump—not because some Statute or special rule so provides, but because it is the first step to appropriate and the actual appropriation will relate back to the first step.



Ophir Silver Mining Co. vs. Carpenter, 4 Nev.  
936;

Kimball vs. Gearhart, 12 Cal. 27;

Canal Co. vs. Kidd, 37 Cal. 282;

McKinny vs. Smith, 21 Cal. 381;

Osgood vs. Eldorado Water Co., 56 Cal. 578;

Sieber vs. Frink, 2 Pa. R. 901.

It is true that the statutes in many states expressly provide that the *first step* is the posting and recording of a notice. Such statutes are but a crystallization of miners' rules. The fact recognizes that the posting of notice is a step. It was a step before any Statute was enacted—if [144] it preceded any other step then it was the first step.

I find that the Tripp notice was the first step taken by anyone.

A little after one month from taking this first step arrangements were made with surveyors and early in August the flume line was surveyed and work on the flume begun, and I am unable to find any lack of diligence in prosecuting the work of appropriating the water and of applying it to a beneficial use.

It seems to me, then, that the evidence on this application does not show the right of plaintiff to be clear or probable. A fuller hearing may lead to the opposite conclusion. If the parties will get the case to issue I will try same at the earliest possible moment.

The application for an injunction *pendente lite* is denied.

Filed in the District Court, District of Alaska,  
First Division. Feb. 3, 1914. J. W. Bell, Clerk.  
By H. Malone, Deputy. [145]

*In the District Court for the District of Alaska,  
Division No. One, at Juneau.*

No. 1074—A.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Plaintiff,

vs.

EBNER GOLD MINES COMPANY, a Corporation,  
Defendant.

**Memorandum Decision.**

I arrived at a conclusion in this case some time ago and have been hoping against hope to find time to write an opinion, but despairing of that I have decided to announce my decision orally.

The evidence on final hearing is not substantially different from that on the hearing for the preliminary injunction.

I am of the opinion that the rules of the Harris Mining District are obsolete and have never been in force in this District—at least not since the coming of organized government. I think the Tripp notice was the first step taken by anyone, and that those who took that step and their successors have proceeded with due diligence, and that they are prior in point of time to the plaintiff, and so finding, a decree will be entered dismissing the bill.

Filed in the District Court, District of Alaska,  
First Division. Apr. 30, 1915. J. W. Bell, Clerk.  
By John T. Reed, Deputy.

[Endorsed]: No. 1074-A. In the United States District Court for the District of Alaska Division No. One Alaska-Juneau Gold Mining Co., a Corporation, Plaintiff, vs. Ebner Gold Mines Co., a Corporation, Defendant. Memorandum Decision. [146]

---

*In the District Court for the District of Alaska, Division No. One, at Juneau.*

1074-A.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Plaintiff,

vs.

EBNER GOLD MINES COMPANY, a Corporation,  
Defendants.

**Proceedings Had June 22, 1914.**

BE IT REMEMBERED that this cause came on regularly for trial on the 22d day of June, 1914, before the Honorable ROBERT W. JENNINGS, Judge of the District Court for the District of Alaska, Division No. 1, holden at Juneau; that the plaintiff appeared by its counsel, Hellenthal and Hellenthal; defendants, and each of them, appeared by their counsel, Winn and Burton.

Whereupon the following proceedings were had:  
[147]

## INDEX.

	Dr.	Cr.	ReD.	ReC.	ReD.	ReC.
PLAINTIFF'S CASE.						
Bradley, F. W.....	164	179	194	195		
Casey, Russell .....	235	238	240			
Cole, Cash .....	264	265				
Dempsey, Jas. ....	268	269				
Harri, O. M. ....	198	209	228			
Hilton, Sandy .....	241	243				
Jones, George C.....	291	295				
Kinzie, R. A.....	12	58	159			
"    "    Recalled...	306	307				
Linsay, W. R.....	275	277	285	286		
"    "    Recalled...		288				
Lynn, Jas. ....	229	230				
Mulligan, L. D.....	248	250				
Simpson, F. M.....	272	273				
Summers, F. F. ....	245	246				
Wayland, R. G.....	1	2	10			
"    "    Recalled..	251	253	260	261		
"    "    "    ...	308					
DEFENSE.						
Black, Al.....	563	572	580			
"    "    Recalled .....	581	581	585			
"    "    "    .....	614	615				
Carlson, John .....	512	519	540	543		
"    "    Recalled ...	612	612	613			
Ebner, Wm. M.....	828	853	867			
"    "    Recalled ....	932	933				
Graham, Al. ....	544	551				
Harri, Oscar.....	603	607				
Jackaleve, Geo. ....	593	594				
Mackay, Angus .....	473	492	507	510		
"    "    Recalled..	923	925	931			
Marshall, J. B.....	387					
Muir, D. D. Jr.....	871	887	897	900	902	905
"    "    Recalled .....	938	940				
Noble, Geo. R.....	1001	1008	1111			
Perrelli, John.....	1012	1013				
Radel, Fred.....	375	381	383	354		
Riordan, Dan .....	587	589				



# 162 *Alaska-Juneau Gold Mining Company vs.*

	Dr.	Cr.	ReD.	ReC.	ReD.	ReC.
Soini, John .....	610					
Tripp, H. T. ....	310	327	360	363	367	368
“ “ Recalled.....	371	373				
Winn, J. R. ....	951	958	990			
Wettrick, F. J. ....	391	438	467	471		
“ “ Recalled... ..	809	817				
“ “ “ ... ..	911	920				

[148]

## INDEX (Continued).

### REBUTTAL

Bradley, F. W. ....	1326	1341	1363	1365
Bullard, Ben. ....	698	700		
Casey, Russell .....	1273	1274		
Early, Peter .....	1027	1029		
Fox, C. A. ....	719	721		
Harkrader, Geo. ....	673	679	687	
Harri, O. M. ....	1215	1217		
Harris, Wm. ....	793	799		
Heid, J. G. ....	1175	1179		
Hellenthal, S. ....	1312	1314		
Howe, G. A. ....	750	752		
Hendrickson, H. ....	1043	1046	1048	
Hudson, M. ....	730	731	739	
Kinzie, R. A. ....	1222	1239	1271	
“ “ Recalled... ..	1281	1282		
“ “ “ ... ..	1283	1286		
Lindsay, W. R. ....	618			
“ “ Recalled.. ..	1136	1142	1161	1162
Lynn, Jas. ....	1238	1289		
Kuniz, Arthur .....	1049	1051		
Mackey, Eli .....	625	630	638	
Marshall, J. B. ....	639			
“ “ Recalled.. ..	1128			
“ “ “ .....		1292	1302	
“ “ “ .....	1324	1324		
Miller, Geo. ....	743	745	746	747
Moore, L. A. ....	767	771	781	
States, Henry .....	1198	1201		
Stewart, B. D. ....	1065	1074	1106	1110
Stewart, Wm. ....	672	694		
Wachter, Gus. ....	1054	1056		

	Dr.	Cr.	ReD.	ReC.	ReD.	ReC.
Wayland, R. G. ....	1114	1118	1127			
Webster, Edw.....	1168	1171				
Wells, Charles .....	646	657	668			
"        "        Recalled..		1016	1020	1022	1026	
Wiley, Perry .....	705	706	709	716	717	
Wilson, Al.....	1037	1039				

[149]

SURREBUTTAL.

INDEX (Continued).

Carlson, John .....	1457	1458			
Ebner, Wm. M.....	1406	1418	1434		
"        "        Recalled....	1455	1455			
"        "        "        .....	1593	1595			
Enich, Jerry.....	1460	1461	1461		
Jackaleve, Geo. ....	1465	1466			
Mackay, Angus .....	1447	1450			
"        "        Recalled....	1454				
Martin, J. T.....	1467	1468	1470	1471	
Muir, D. D. Jr.....	1473	1480			
Perelli, John .....	1439	1441	1443	1443	
Riordan, Dan .....	1463	1464			
Tripp, H. T.....	1436	1437			
Van Winkle, L. E.....	1492	1513	1580	1584	
Wagner, John .....	1445				
Wettrick, F. J.....	1371	1378	1403		
"        Recalled.....	1585	1592			
"        "        .....	1597				
Winn, J. R.....	1486	1488			

REJOINDER.

Kinzie, R. A.....	1599	1605	1608		
-------------------	------	------	------	--	--

SURREJOINDER.

Wettrick, F. J.....	1610	1611			
---------------------	------	------	--	--	--

[150]

The plaintiff, to maintain the issues on its part, called as a witness

**Testimony of R. G. Wayland for Plaintiff.**

R. G. WAYLAND, who being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is R. G. Wayland? A. Yes, sir.

Q. What is your business calling or profession, Mr. Wayland? A. Surveyor and mining engineer.

Q. By whom, are you employed at present?

A. Alaska Treadwell Gold Mining Company.

Q. Also are the head surveyor for the Alaska Juneau Company? A. Yes, sir.

Q. And the other companies operated under the same management? A. Other allied companies.

Q. Are you familiar with the properties of the Alaska Juneau Gold Mining Company? A. I am.

Q. And with the properties of the Ebner Gold Mining Company? A. I am.

Q. You have in your possession data relating to those properties— A. Yes.

Q. And surveys and boundaries thereof, and the ownership of the claims? A. Yes.

Q. I call your attention now to a plant or map marked for identification Plaintiff's Exhibit No. 1, and ask you to look at *to* and state whether that was made under your directions? [151\*—1†]

---

\*Page-number appearing at foot of page of original certified Record.

†Original page-number of Testimony as same appears in Original Certified Transcript of Record.

(Testimony of R. G. Wayland.)

A. It was.

Q. Are all of the matters and things delineated upon that map correctly shown?

A. They are.

Q. And the boundaries of the properties belonging to the Alaska Juneau Gold Mining Company are correctly shown?     A. They are.

Q. As well as those belonging to the Ebner Gold Mining Company?     A. Yes, sir.

Q. And the other various matters and things are also correct?

A. The map is correct, to the best of my knowledge.

Q. Including the legends upon it?     A. Yes.

Mr. HELLENTHAL.—I think that is all.

Cross-examination.

(By Judge WINN.)

Q. Mr. Wayland, how long have you been in the employ of the Treadwell Company?

A. About 8 years.

The COURT.—Just a moment—do you offer the map, Mr. Hellenthal?

Mr. HELLENTHAL.—I offer the map.

The COURT.—Any objection?

Judge WINN.—My objections will be better shown after I examine him. I object to it as not sufficient foundation has been laid for the introduction of the map, and it is immaterial and incompetent as proving any of the issues in this case.

The COURT.—You had better examine him and make your objections afterward.



(Testimony of R. G. Wayland.)

(Questions by Judge WINN.)

Q. Now, have you been doing very much surveying for the Alaska Juneau Company during this year? A. Somewhat; yes. [152—2]

Q. To what extent?

A. A little bit each year for the last four or five years.

Q. Have you surveyed any of the claims of the Alaska Juneau Gold Mining Company that are included within the exterior boundary lines of this plat, for patent, during your service with the Treadwell Company? A. No.

Q. You have not surveyed even one claim for the Alaska Juneau Gold Mining Company for patent that is included within these exterior boundary lines here that you have indicated as belonging to the Alaska Juneau Gold Mining Company?

A. No; I am not a deputy mineral surveyor.

Q. To what extent, then, Mr. Wayland, have you surveyed this property that is included in this map that has just been identified by you?

A. Every claim except the old patented claims have been surveyed under my direction, and the notes have been worked out in my office, and I have run a great many lines for tunnel and other improvements, tying various points in the improvements, and have checked whatever work came into the office.

Q. Don't you know that in these exterior boundary lines you have included some properties on the east side of the map that belong to the Alaska Gastineau people?

(Testimony of R. G. Wayland.)

A. I presume there may be conflicts.

Q. You know that to be true, don't you?

A. I know there are conflicts.

Q. But wherever there is a conflict, of course, you have given the Alaska Juneau Company the benefit of this conflict?

A. Everything that is included in that map is included in the exterior boundaries of claims claimed by the Alaska Juneau Company. [153—3]

Q. It is all Alaska Juneau over here on the west side where it is marked "Property of the Alaska Juneau Company," with the word, "Ebner Dam," just opposite it—don't you know there is property included in there that is owned by the Ebner Gold Mining Company?

A. I know there is a conflict.

Q. What do you mean by a conflict?

A. A conflict is a portion that is overlapped by another claim.

Q. Don't you know that where you have put this flume is patented property belonging to the Humboldt Company and there is no conflict pending over that property?

A. There is over a part of it.

Q. You know the Humboldt mill site, don't you?

A. Yes.

Q. And you have included that as the property belonging to the Alaska Juneau Company?

A. Part of it is and part of it is not.

Q. Part of the Humboldt is not patented?

A. It is not included in that area.

(Testimony of R. G. Wayland.)

Q. But the portion you have included you know is patented property, don't you?

A. Not all of it is patented property.

Q. Now, I will ask you this question: Do you know whether or not the Humboldt Mining Company claims any property up there that is not patented?

A. I don't know it.

Q. You do know there is no mill site or property there belonging to the Humboldt Mining Company that is not patented; and you have included that property in this map, haven't you?

A. I have included part of it in that.

Q. How much of it?

A. I could not say how much. [154—4]

Q. Under whose instructions did you make this map?

A. Under the instructions of an officer of the Alaska Juneau Company.

Q. Under Mr. Kinzie's instructions?

A. Yes, sir.

Q. He told you what property to include in there and what not, didn't he?

A. He gave me an outline of what he wanted; yes, sir.

Q. Now, down at this point where the Alaska Juneau bunk-house and Gold Creek tunnel are, is there any property in there that you have included that is in dispute or belongs to some other company?

A. Not that I know of.

Q. Have you included in the exterior boundary lines of this plat and map two mining claims, one of

(Testimony of R. G. Wayland.)

which is known as the Canyon and another which is known as the Oregon—both the Old Oregon claim and the New Oregon claim?

A. Part of the Oregon is there—the Canyon is not.

Q. The Canyon is not included within the boundaries—the exterior boundaries of the ground you claim belonging to the Alaska Juneau?

A. No.

Q. You left that out?      A. Yes.

Q. What claims cover this portion, Mr. Wayland, just above the word “Alaska Juneau Bunk-house” and the next legend “Flume, Tunnel,”—now the property that lies just north of that, what claims are in there, do you know?

A. The Wyoming Lode claim and the El Oro placer.

Q. Placer claim?      A. Yes, sir. [155—5]

Q. You don't know when those claims were located, do you?

A. The Wyoming lode was located in 1899—October some time.

Q. Is it patented?      A. It is not.

Q. When was the placer claim you refer to located?

A. That was located in January, 1913.

Q. This last January?      A. Yes, sir.

Q. Do you know whether those claims, especially that placer ground, covers property that is in dispute?      A. It covers partly—

Q. It covers what is known as the Parish No. 2 or the Mackay claim, does it not?



(Testimony of R. G. Wayland.)

A. I didn't know the Parish No. 2 was in dispute, and I don't know about the Mackay claim.

Q. You didn't examine the record?

A. I didn't examine all the records.

Q. You don't know anything about a location notice of the Mackay claim being on record?

A. No.

Q. If there is a claim, either Parish No. 2 or Mackay claim, then you have included that ground as belonging to the Alaska Juneau Company?

A. If the Parish or Mackay is over the ground it is true, yes.

Q. You know where it is claimed the old boundary lines of the Parish No. 2 are, don't you?

A. Yes, sir.

Q. Then you know if the Parish No. 2 is an outstanding claim under another name, that you have included it in the exterior boundary lines of what is claimed by the Alaska Juneau Company?

A. I have included part of the ground that was occupied by the Parish No. 2. [156—6]

Q. Which part of it—and which side of the creek?

A. On both sides.

Q. Does it cover it all?

A. Not all of it.

Q. About how much is left out?

A. About one-third.

Q. Now this ground that borders upon Gastineau Channel, commences just below the town of Juneau, just below Jorgenson's mill, does it—what is known as the Jorgenson mill?

(Testimony of R. G. Wayland.)

A. Yes, it it commences on the other side of the Jorgenson mill.

Q. And extends down how far towards Sheep Creek? A. About one mile.

Q. Are those mining claims? A. Yes, sir.

Q. Located by the Alaska Juneau people?

A. Yes.

Q. By whom?

A. Located by various people—some by the Alaska Juneau—the others were purchased.

Q. Purchased by the Alaska Juneau?

A. Purchased by the Alaska Juneau; yes, sir.

Q. You claim that this whole ground bordering on Gastineau Channel on this map and plat is owned by the Alaska Juneau, either by locations made by them or that they have purchased, do you?

A. Yes, sir; everything included within the boundaries as shown on that map.

Q. How far down—what object is there on the ground that you can specify is near the lower end line of this map going down to Sheep Creek?

A. Southeastern tower of the transmission line of the Alaska Gastineau Company as it crosses the big slide.

Q. That is down here in between Sheep Creek and that space [157—7] where it usually slides in the winter, and where you spanned it with the high-power wires—high tension wires carrying the power for the Alaska Juneau?

A. Yes, sir.

Q. You know of your own knowledge—you are

(Testimony of R. G. Wayland.)

testifying that the Alaska Juneau own it, as you have stated?

A. That is the best of my knowledge; yes.

Q. I want to know how positive you are, Mr. Wayland? Do you know anything about it by reason of having examined the records, or did you just take Mr. Kinzie's word for it?

A. He has examined the records and perhaps he can tell you more definitely on that, if you want to ask him about it.

Q. I believe you stated a while ago that you made this considerably under the instructions of Mr. Kinzie as to what he wanted on there?

A. Not in detail.

Q. To what extent did you follow his instructions?

A. I was instructed to make a map showing all of the property of the Alaska Juneau Gold Mining Company, similar to the one made last year.

Q. And all it claimed?

A. All it claimed and all it owned.

Q. Now these claims along down the beach, are they all mining claims? A. Yes, sir.

Q. How long ago were they located, do you know?

A. From 1895 to 1912.

Q. What are these claims that run along what is marked on here "Sea Level Tunnel, Proposed Extension," commencing down the Gastineau Channel and extending up north—what are those claims?

A. Mining claims.

Q. Those are mining claims located across the formation through there? [158—8]

(Testimony of R. G. Wayland.)

A. Partly.

Q. What is indicated by this space rather to the east here which seems like a long tunnel from Gastineau Channel up the hill?

A. Those are Summits Nos. 1, 2, 3 and 4 patented lode claims.

Q. They are patented—these others down on the sea level tunnel are not patented?

A. Not patented.

Q. When were they located?

A. September 18, 1902.

Q. How many of these claims that you have included in there, in a rough way, Mr. Wayland, have been located, say since the first of August, 1910?

A. Perhaps 50.

Q. Perhaps 50 of these claims. Where it what is known as the Caro property with relation to any point on this map.

A. It is shown on the lower left-hand corner of the map.

Q. Where is that—will you point it out, Mr. Wayland? A. At a point marked "A."

Q. You haven't included that in the boundaries of the property belonging to the Alaska Juneau Company, have you? A. No.

Q. Now, who wrote in these various legends in here—for instance, "Point at which excavation for second New Ebner Mill was started since appropriation of Gold Creek water by the Alaska Juneau Gold Mining Company"? A. I wrote it.

Q. At whose instigation did you write that in?



(Testimony of R. G. Wayland.)

A. Mr. Hellenthal's.

Q. How much of this map did Mr. Hellenthal direct you to make? A. The inscriptions.

Q. Inscriptions were made according to his directions? A. Yes, sir.

Q. When did you say you got up the map? [159—9] A. Last week.

Q. Do you know where the boundaries of the Old Oregon claim were, Mr. Wayland? A. Yes.

Q. And it is virtually the same as what is referred to throughout this case as the New Oregon, isn't it?

A. There is some difference in the description, but the ground claimed is virtually the same.

Q. Now, this placer claim that you say belongs to the Alaska Juneau, is located on the front part of the Oregon claim, isn't it?

A. It covers part of the Oregon claim.

Q. And that location as well as the quartz location were made by the same company, and belong to the Alaska Juneau? A. Yes.

(Whereupon said map was received in evidence and marked Plaintiff's Exhibit No. 1.)

Redirect Examination.

(By Mr. JACK HELLENTHAL.)

Q. Now, Mr. Wayland, referring again to Exhibit 1 which has just been received in evidence, Judge Winn has asked you some questions with reference to the conflict between the Humboldt patented ground and some claims that are shown there—the claims shown there are simply the outlines of the claims as located, and lap over the patented ground, is that

(Testimony of R. G. Wayland.)

correct?      A. That is true.

Q. Simply in order to clear up the claim and clear up the end lines?      A. Yes.

Q. And only took in a very small fraction of the patented area of the Humboldt Company from as far as it is shown there?      A. Yes. [160—10]

Q. The claim is merely located in the form of a parallelogram upon the ground, and in order to preserve that shape of the claim it is necessary to lap over the patented ground?      A. Yes, sir.

Q. As far as those Perseverance claims are concerned, they are small?      A. Small.

Q. Very small?      A. Very small fractions.

Q. In regard to the claims on the beach here—you said they were mining claims; I direct your attention to the fact that there are some mill sites along there?

A. Mill sites and mining claims both—I understand mill sites and mining claims are both mining claims.

Q. You have spoken of the mill sites and claims as lode claims?      A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

(Whereupon an adjournment was taken until 9:30 to-morrow morning.) [161—11]

MORNING SESSION.

June 23, 1914, 9:30 A. M.

The plaintiff, to further maintain the issues on its part, called as a witness R. A. KINZIE, who having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of R. A. Kinzie, for Plaintiff.**

Direct Examination.

(By Mr. JACK HELLENTHAL.)

Q. Your name is R. A. Kinzie? A. Yes.

Q. You are the General Superintendent in charge of the Alaska Juneau Mining Company's operations?

A. I am.

Q. How long, Mr. Kinzie, have you been connected with the Alaska Juneau Gold Mining Company as General Superintendent?

A. Since some time in 1904.

Q. Prior to that time did you have any connection with this same company? A. I had.

Q. In what capacity were you engaged with that company prior to 1904?

A. Assistant Superintendent.

Q. How long did you serve in that capacity?

A. Since February, 1901.

Q. Now, Mr. Kinzie, are you familiar with the plans of operations of the Alaska Juneau Gold Mining Company? A. I am.

Q. Have you been familiar with these plans and the operations of this company ever since your connection with it both as Superintendent and General

(Testimony of R. A. Kinzie.)

Superintendent and as Assistant General Superintendent? A. I have.

Q. You have, during all that time, been made familiar with the property of the company? [162—12]

A. I have; yes, sir.

Q. You are acquainted with the Ebner Gold Mining Company? A. I am.

Q. And with their properties? A. I am.

Q. You know the property in dispute in this case—that is to say, you know the location of Gold Creek upon the ground? A. I do; yes.

Q. And the properties surrounding the property in dispute, in a general way? A. I do; yes.

Q. Now, when you first became connected with the Alaska Juneau Gold Mining Company, Mr. Kinzie, what did the company have in the way of a milling plant?

A. In 1901 the company had a 30-stamp mill in Silver Bow Basin, and also a 5-stamp mill in Silver Bow Basin.

Q. It had a milling plant of a capacity at that time—total capacity of 35 stamps?

A. Total of 35 stamps; yes, sir.

Q. That was located in Silver Bow Basin?

A. Yes, sir; in Silver Bow Basin.

Q. Where is that situated with reference to the shore of Gastineau Channel?

A. It is located about two miles north of the shore of Gastineau Channel, running parallel with the shore of Gastineau Channel.



(Testimony of R. A. Kinzie.)

Q. Where is it with reference to the present mill site of the Alaska Juneau Company?

A. It is right back of a ridge of a line of mountains about 2 miles north of the present mill site of the Alaska Juneau.

Q. There is a line of mountains between Silver Bow Basin, where this mill is situated, and the present mill site of the Alaska Juneau Company? [163—13]

A. There is; yes.

Q. At that time, Mr. Kinzie, what if any plans did the company have with reference to the enlarging of its plant and operation—when you first became connected with the company?

A. The plan then contemplated an enlarged milling plant situated at some point on the shore of Gastineau Channel. Up to that time the milling plant in Silver Bow Basin, as well as the development, had been primarily sampling.

Q. The plant was too small to be of commercial value?

A. The plant was not only too small, but on account of the climatic conditions in Silver Bow Basin you could only run approximatly during five months of the entire year which necessitated the closing down of the mine for a term of seven months in the year; for that reason it was decided to get to some point where the milling plant could run the entire year, and at some point where jacket water as well as water for other purposes was available.

Q. Now, Mr. Kinzie, what were the company's

(Testimony of R. A. Kinzie.)

plans at that time—how did they intend to operate—at the time you first became connected with the company in 1901?

A. The plans as outlined at the time of my arrival were practically the same plans as have since been carried out—that is, it contemplated a mining plant in Silver Bow Basin, the driving of a tunnel from there to some point on Gastineau Channel—or from Snow Slide Gulch; the location of a mill near tide water and the transportation—and the installation of a transportation system from the mine to the mill situated on Gastineau Channel.

Q. What had been done at that time looking towards the execution of that plan?

A. There had been a line of claims located from the property in Silver Bow Basin to Jualpa Basin, situated just back of Juneau, covering the ground of the proposed tunnel [164—14] from the foot of Snow Slide Gulch to a point immediately beyond the workings in Silver Bow Basin.

Q. What claims were included within the group so located?

A. Idaho, Colorado, Wyoming, Maryland and Nevada—I think the Nevada was in the same group; they were located on the hill; the Oregon, Colorado and Idaho are located near the foot of Snow Slide Gulch; the other claims are further up on the hill.

Q. That was the first step taken to carry this plan into execution?     A. Yes.

Q. And that had been done when you arrived here?

A. That had been done before I arrived.

(Testimony of R. A. Kinzie.)

Q. Now, after your arrival what was done in that connection—what was done looking towards the installation of a larger milling plant—what did you do at the mine first in the way of development work and prospecting—in a general way, Mr. Kinzie?

A. At the mine the work of sampling the property by means of a 30 stamp mill and 5 stamp mill were continued uninterruptedly up to about a year ago. The property itself was developed by a number of long cross cut tunnels; by the mining of ore from open pits and the sampling of all exposed portions of the mine. Toward following out the scheme as outlined by me a few minutes ago, a second line of claims was located and afterwards patented from the *the* property in Silver Bow Basin to a point immediately below the town of Juneau on Gastineau Channel. But this route was discontinued for a time, and a more feasible route, and the best route—namely, that from the foot of Snow Slide Gulch to the point where the Alaska Juneau mill is *not* located was continued. In this connection the necessary right of way, the necessary site for the milling plant, transportation [165—15] route, and so forth, were located or acquired by purchase.

Q. Now, when—at what time was your mine in a position to require the erection of a mill; when had the development work in your mine reached the point where the construction of an enlarged mill became an immediate necessity?

A. This question was practically decided in the year 1909.

(Testimony of R. A. Kinzie.)

Q. 1909?      A. Yes.

Q. And where had you planned to get the water to operate this new milling plant?

A. From a point on the Oregon claim on Gold Creek, at the exact location of the point where our present dam is now located, or the dam of the Alaska Juneau Company.

Q. In that vicinity?      A. In that vicinity.

Q. How was the water at that time to be conveyed to the milling plant on the beach?

A. The original plan was to carry the water so located by means of a flume following the contour of the hill to a point on Gastineau Channel; this route was afterwards shortened by driving a tunnel through Mt. Roberts, as indicated on Exhibit No. 1.

Q. Now, what you done, Mr. Kinzie, in the way of making preliminary surveys and things of that character in relation to that—had this been done prior to 1909?

A. All the preliminary work in connection with the claims and contemplated work had been done at that time.

Q. The preliminary work necessary to establish the feasibility of the plans had been done prior to that time?

A. Had been done prior to the years 1909 and '10.

Q. Now, in the year 1910 what, if anything, did you cause to *to* be done in the way of surveying a preliminary line and securing [166—16] the level for a flume line from the point of intended diversion to the place where the mill was to be constructed on



(Testimony of R. A. Kinzie.)

the shore of Gastineau Channel?

A. In the early part of July, 1910, a preliminary line was surveyed from a point here above Gold Creek to a point on Gastineau Channel, above the location of our Utah claim, and the necessary rights of way were acquired or located for the proposed flume and tramway.

Q. Following this, what did you do in the way of causing a location to be posted?

A. As soon as we had acquired the necessary rights of way and were ready to go ahead with the construction of our flume, pipe line, and so forth, we had the necessary water located on Gold Creek.

Judge WINN.—I move to strike that out as not the best evidence—the location notice is the best evidence—it is not shown that the witness knows anything about the posting of it.

The COURT.—The answer is objectionable because it uses “we had the water located.”

Mr. HELLENTHAL.—Let that part of it be stricken.

Q. What did you do in the way of directing—did you direct anyone in your employ to locate the water rights?

A. I directed one L. D. Mulligan to locate 20,000 inches of water at an indicated point on Gold Creek.

Q. When was that?

A. That was on August 1, 1910.

Q. L. D. Mulligan was in the employ of the Alaska Juneau Gold Mining Company? A. He was.

Q. And went there as its agent and employee to

(Testimony of R. A. Kinzie.)

make this location for it? A. He did. [167—17]

Q. What did you do in the way of commencing active construction work looking towards the diversion, use and application of the water sought to be appropriated?

A. On the same day that I sent L. D. Mulligan to locate the water of Gold Creek, I sent O. M. Harri to Gold Creek to make the preliminary arrangements to accommodate a crew of men who were to work on the construction of the flumes, tunnels, and so forth, for the conveying of the water from Gold Creek to the shore of Gastineau Channel.

Q. By preliminary arrangements, what do you mean, Mr. Kinzie?

A. By preliminary arrangements I mean the construction of a house in which the men were to live; the construction of trails and roads to the points where the men would work; there would be no use in my sending men—

Judge WINN.—I object to that; it is argumetative.

The COURT.—You have answered the question, Mr. Kinzie.

Q. Now, Mr. Kinzie, what were the natural conditions converging the point where the location notice was posted and where the work had to be done—Mr. Kinzie, do you know where the location notice was posted by Mr. Mulligan? A. I do.

Q. Did you see it on the ground afterwards?

A. I did.

Q. Was it posted at the point where you intended

(Testimony of R. A. Kinzie.)

it to be posted, approximately?      A. Yes.

Q. And that was the point of intended diversion?

A. Approximately; yes.

Q. Are you familiar with the conditions of the ground, near the point of intended diversion?

A. I am.

Q. A flume had to be built in order to convey the water?      A. It did. [168—18]

Q. Do you know the natural conditions surrounding the place where the men had to work in order to carry out this work, this construction work, in connection with the diversion and the application of the water?      A. I do.

Q. Now, you may state what is the natural condition?

A. The natural conditions on both sides of Gold Creek in the vicinity of the posting of the notice are extremely rough and rugged; the sides of the canyon are precipitous and for the most part are composed of rocks and cliffs.

Q. What, if any, vegetation is there in the neighborhood?

A. There is very little vegetation, and what there is consists of short alders growing just above the cliff, on the level spaces.

Q. Was there any brush in the way of the men getting right to work?

A. The alder brush growing on the level spaces above, as well as the small underbrush on the side of the Gold Creek canyon where there is any dirt, are very hard to get through, and it was necessary to have

(Testimony of R. A. Kinzie.)

this brush removed before any extensive work could be done.

Q. Was there any place on the ground that the men could put a house at the time the location was made and the Mulligan notice was posted?

A. There was no place at all.

Q. Or in the vicinity?

A. There was no place in the vicinity where the men could put a house.

Q. Could lumber and material be hauled to the place where the work was to be carried on without the construction of roads and trails?

A. No; a team could not go within something more than a thousand feet of the nearest point at which we intended [169—19] to do the construction work.

Q. Now, what did you do in the way of preliminary work looking towards the diversion of that water?

A. The preliminary work of brushing out, brushing trails for getting the lumber for the construction of a bunk-house from a point below the Jualpa dam to the selected point on the shore of Gold Creek.

Q. Now, just one question there—the lumber could be landed—the teams could go as far as what is called the Jualpa dam? A. They could; yes, sir.

Q. Now, where is the Jualpa dam situated, with reference to the point at which the Mulligan notice was posted?

A. The Jualpa dam is situated down Gold Creek at a distance of about five or six hundred feet from



(Testimony of R. A. Kinzie.)

the proposed location of the Alaska Juneau bunk-house.

Q. That would be about how far down the creek from the place where you intended to build the dam?

A. That would be about 1500 or 1600 feet.

Q. And from the Jualpa dam up, the canyon is precipitous and covered with brush? A. Yes.

Q. And the lumber, I understand, could be delivered by teams as far up the creek as the Jualpa dam?

A. A point just below the Jualpa dam.

Q. From there on what did you do in the way of constructing trails to get the lumber up?

A. The brush on the old basin road as far as the bend immediately beyond the present Gold Creek tunnel was cleared out and brushed out and the debris removed from the trail; the trail was then cut to a point near the falls of Snow Slide gulch, and another trail to a point at the foot of Snow Slide gulch; further up the trail was constructed to the proposed site of the Alaska Juneau bunk-house, and from the Alaska [170—20] Juneau bunk-house trails were constructed on both sides of Gold Creek to the point at which the Alaska Juneau dam was constructed.

Q. Now, what do you say as to the necessity of constructing these trails before men could be placed to work on the ground?

A. Trails were essential, and work had to be done on the grade so that men could get to and from their work.

Q. What do you say as to the necessity of these trails in order to get the material to the place where

(Testimony of R. A. Kinzie.)

the dam was to be constructed and the bunk-house built?

A. It would also be essential for the same reason.

Q. And the material could not be got there without the trail? A. No; it could not.

Q. Who did you send down there first, did you say, to do this work? A. Mr. O. M. Harri.

Q. What instructions did you give him?

(Objection sustained—question not answered.)

Q. What did you send him up there for, Mr. Kinzie?

A. To start the preliminary work of the appropriation of the water from Gold Creek.

Q. What did the preliminary work consist of?

A. That preliminary work consisted of cutting trails, building the bunk-house, blacksmith-shop; in fact all of the preliminary work necessary for the starting of work for the appropriation of the water.

Q. What, if any, authority did Mr. Harri have to employ other men to help him?

A. He was instructed to employ as many men as he needed to continue the work in a workmanlike manner.

Q. When were you on the ground for the first time, Mr. Kinzie, after the posting of the Mulligan notice? [171—21]

A. To the best of my recollection it was on the 3d of August.

Q. What, if anything, did you find upon the ground at that time in the way of work that had been done by Mr. Harri or men working under him?

(Testimony of R. A. Kinzie.)

A. To the best of my recollection it was the 3d—at that time the trail had been brushed out from the Jualpa dam—the point where the Alaska Juneau bunk-house is constructed had been cleared of brush and a trail constructed up the left-hand side of Gold Creek to a point at which a plank spanned the creek to the right-hand side of Gold Creek; I didn't get beyond that point.

Q. Not on that day?

A. Not on that day; I met Harri just below that point, and we went as far as where the plank spanned the creek and stopped there.

Q. The trail had been started and at least partly constructed between the Jualpa dam and the site of the Alaska Juneau bunk-house, and some trail had been built above the bunk-house going up the creek?

A. From as far as what is known as the Jualpa dam to the bunk-house, and from the bunk-house to the plank which was placed across Gold Creek.

Q. Part of the trail lay between the bunk-house and the present Alaska Juneau dam? A. It did.

Q. And the balance lay between the bunk-house and the Jualpa dam?

A. The first part referred to was between the Jualpa dam and the Alaska Juneau bunk-house.

Q. And the second one lay between the Alaska Juneau bunk-house and the present Alaska Juneau dam?

A. From the bunk-house to the Alaska Juneau dam, upstream from the Alaska Juneau bunk-house.

(Testimony of R. A. Kinzie.)

Q. Now, do you remember seeing any other men on the ground there that day except Mr. Harri, or is your recollection clear upon that?

A. My recollection is not clear upon that point; I was directed to where Harri was but I cannot positively say who directed me on the 3d of August.

Q. When next did you go upon the ground?

A. I am pretty sure it was the 6th of August, the next time I was on the ground.

Q. At that time how far had the work progressed?

A. The trails from a point below the Jualpa dam to Snow Slide gulch and had been brused out; steps had been cut down to Snow Slide gulch; a trail had been constructed from the foot of Snow Slide gulch to the site of the Alaska Juneau bunk-house; the work of constructing the bunk-house had been started, and the trails up Gold Creek had been run on both sides of the Canyon, one trail going up the right-hand side of the creek to the Jualpa flume, and the trail on the other side of the creek up over the Borien Pit dump to the same plateau just above the cliff.

Q. At that time do you remember how many men you saw on the ground besides Mr. Harri, or do you remember that?

A. There were a number of men—I remember four or five of them distinctly, there were two Indians; there was an old carpenter by the name of Dempsey; there was a one-eyed man by the name of Burg, and some other men helping. Now, I have since learned who those men were, but didn't remember it until I had looked the matter up.



(Testimony of R. A. Kinzie.)

Q. At that time had the material arrived on the ground for the bunk-house?

A. Lumber had arrived upon the ground, but whether it was all delivered over there I am not sure.

Q. There was material there and they were putting up the [173—23] house?

A. Part of the lumber was in Snow Slide gulch, and part of the lumber was on the site of the bunk-house, and the carpenters were at work.

Judge WINN.—What date is this?

A. That is the 6th of August.

Q. From then on, Mr. Kinzie, how frequently were you on the ground?

A. I was there practically every two or three days—might be less, might be more.

A. Every two or three days for how long a period of time?

A. Up to the month of December, or latter part of November of that year.

Q. How many men did you have employed from the 1st of August up to—when was the time the water was first put to use, Mr. Kinzie?

A. I think it was November 17th.

Q. Now, between the time that the water was put to use on November 17th and the time that Mr. Harri first went up there on the 1st of August, how many men did you have employed on that job?

A. We employed from one man on the 1st of August to 50 or 60 men during the month of November, 1910.

Q. You had one on August 1st, that is to say,

(Testimony of R. A. Kinzie.)

Harri, and ran up to as high as 50 or 60 at one time?

A. Yes.

Q. How did the number of men that you had on the ground at any one time compare with the number of men you could use to advantage in prosecuting the work?

Q. We worked every man that we could advantageously work at all times from the time the water was first appropriated to the time the water was put to use.

Q. I will ask you now, Mr. Kinzie, as to how the work was [174—24] carried on, commencing on the 1st of August, up to the time that the water was put to use, with reference to its being carried on continuously or otherwise?

A. The work was continuous from the time of the location of the water up to the time that it was actually put to use.

Q. Was there any time when there were not men working on the ground?

A. No time from the time the water was located until it was finally put to use.

Q. Now, when was it that the preliminary work, such as the construction of trails, roads, accommodations for men to live in, and things of that character had reached the point where you could put men to work on the actual work of grading off the flume grade?

A. That was in the latter part of August, 1910.

Q. What did you do then in the way of establishing the grade for the flume?

(Testimony of R. A. Kinzie.)

A. The flume grade was established, and the work of tunneling, or starting the tunnels to convey the water through the mountain under Snow Slide gulch was also started.

Judge WINN.—What date is this?

A. That was in the latter part of August, 1910.

Q. Now, when you speak of a tunnel to convey the water under Snow Slide gulch, I wish you would explain to the Court what that tunnel consists of, and why you drove that tunnel, and where it is driven?

A. The tunnel is driven from a point on Gold Creek just—

Q. Is this the big tunnel?

A. No; this is the water tunnel going in under Snow Slide gulch from a point just above the Alaska Juneau bunk-house and coming out near the mouth of Gold Creek tunnel. It is impossible to convey the water by means of flume or pipe across Snow Slide gulch on account of the slides of snow [175—  
[25] and dirt, and it was for this reason that the tunnel was driven; it is driven for the purpose of conveying the water, and for no other purpose.

Q. A flume built around the cliff there would be periodically taken away by slides?

A. It would be taken out every winter by snow slides.

Q. That was started some time in August, the preliminary work on it?

A. The preliminary work was started in the latter part of August.

Q. When was the actual work of construction of

(Testimony of R. A. Kinzie.)

that tunnel commenced?

A. The water tunnel was started there either in the latter part of August or the first part of September, and the actual construction work was started a few days later.

Q. In the early part of September?

A. The early part of September.

Q. Prior to this time had there been any intermission in the work?

A. There was no intermission in the work.

Q. Work had been carried on continuously in the vicinity of the point of diversion, in the way of preliminary work?

A. Work had been carried on from the point where the water was to be diverted to a point just below Snow Slide gulch.

Q. This work was all in the vicinity of the point of diversion?

A. It was all in the immediate vicinity of the point of diversion; yes, sir.

Q. And that had been carried on daily and continuously from the 1st of August up to the time we now speak of?     A. Continuously.

Q. When the work was completed in the way of driving these tunnels, did you then continue the other work?

A. The work of grading and the work of preparing the dam was [176—26] started and continued.

Q. Other men were employed for that purpose?

A. Other men were employed for that purpose.

Q. And what was done in the way of road build-



(Testimony of R. A. Kinzie.)

ing, and things of that character while this tunnel was being driven—was that still prosecuted?

A. The necessary roads, trails, and so forth, were continued and improved from time to time so the men could go conveniently to and from their work.

Q. And the material?

A. And materials conveyed to and from the point of use.

Q. Now, when was it that you built the dam in Gold Creek?

A. The work on the dam was started in the latter part of September, but the men were interfered with from time to time, and it was not until the 3d of October that the dam was sufficiently constructed for the first part of the flume to be installed.

Q. Who interfered with the men?

A. Men working on the opposite bank—on the opposite bank from where our men were working on Gold Creek.

Q. Who were they working for?

A. These men, to the best of my knowledge, were working for the California-Nevada Copper Company.

Q. What were they doing?

A. Blasting rocks on the hillside—blasting rocks and rolling them down the hillside to the point where our men were working.

Q. How was this work carried on—was it in the way of mining operations or to interfere with the operations of your men below—in a general way, how was it carried on?

(Testimony of R. A. Kinzie.)

A. The men were posted along the hillside just opposite from where our men were trying to build the dam, and as soon as our men would approach the point at which the dam was [177—27] to be constructed—our men at work in the bed of Gold Creek—the men above would start blasting and roll rocks down the hillside on and over the point where our men were trying to work. This, of course, necessitated our men getting out of the way, and as soon as they would get out of the way the operations on the opposite hillside would cease; if they would attempt to go down again into the bed of the creek the same thing would be repeated.

Q. It was under those conditions that you finally got your dam in? A. It was.

Q. When was that?

A. That was on October 3d, 1910.

Q. You started to build the flume, when?

A. On October 3d, 1910.

Q. And as soon as you built the flume, what did you do towards turning the water through the flume?

A. The water was turned through the flume immediately.

Q. Commencing on what day?

A. On October 3d, 1910.

Q. What volume of water did you carry in that flume?

A. It was carrying practically full.

Q. What was the size of the flume that you started to put in—how did that flume that you put in there then compare with the flume that is in there now, in size?

(Testimony of R. A. Kinzie.)

A. That flume is practically the same size as the flume now installed.

Q. No material difference?

A. No material difference.

Q. Installed on practically the same grade?

A. Practically the same grade.

Q. Carried the same volume of water that it now carries?

A. The first part of the flume, yes. [178—28]

Q. Now, on October 3d, when that dam was built, how far had your work on the grade and the tunnel progressed, Mr. Kinzie?

A. The flume grade had been constructed from a point on the left-hand side of Gold Creek just below the cliff to the mouth of the tunnel under Snow Slide gulch; there were men working cutting a shelf through the cliff at a point about 150 feet below the site of the present Alaska Juneau dam, and there was a crew or men working in the water tunnel under Snow Slide gulch.

Q. I hand you here a photograph, Mr. Kinzie, marked for identification Plaintiff's Exhibit No. 2, and ask you to look at it and state if you know when that photograph was taken? A. I do.

Q. When was it taken, Mr. Kinzie?

A. Taken on the morning of October 4th, 1910.

Q. Were you present when it was taken?

A. I was present, yes.

Q. Does that photograph correctly represent the conditions existing on the ground as shown in the picture? A. It does.

(Testimony of R. A. Kinzie.)

Q. And shows the flume grade just as it was on that morning of October 4th?

A. Shows the flume grade below the rock cliff just below the Alaska-Juneau dam.

Q. There had been portions of the flume grade constructed that are not in the picture, is that true?

A. The portions further up the creek.

Q. Doesn't show on the picture?

A. This picture only shows a portion of the grade close to the water tunnel under Snow Slide gulch.

Q. At any rate, that condition existed on the part of the grade that is shown in the picture on October 4th? [179—29]

A. I did.

Mr. HELLENTHAL.—I offer that picture in evidence.

The COURT.—How much territory is covered there, in length?

The WITNESS.—Following about that contour, it would be about a mile and a half.

The COURT.—And how far is it from the tunnel to the left-hand edge of the picture?

The WITNESS.—About 300 to 500 feet.

The COURT.—It will be received.

(Whereupon the said photograph was received in evidence and marked Plaintiff's Exhibit No. 2.)

Q. I hand you here a photograph, marked for identification Plaintiff's Exhibit No. 3, and ask you to look at it and state if you know when that was taken? A. I do.

Q. When was that taken?



(Testimony of R. A. Kinzie.)

A. On the morning of October 4th, 1910.

Q. Were you present when it was taken?

A. I was present.

Q. Does that correctly represent the matters and things shown upon the photograph as they existed that morning? A. It does.

Q. Explain in a general way what it shows, Mr. Kinzie.

A. In the lower left-hand corner of the picture it shows the logs of the Alaska-Juneau dam as they were placed on the morning of October 4th; it also shows the condition of the first part of the Alaska-Juneau flume on the morning of October 4th after it had been destroyed and crushed during the night by rocks rolling down the hill.

Mr. HELLENTHAL.—I offer that picture in evidence.

Judge WINN.—Who took this picture, Mr. Kinzie? [180—30]

The WITNESS.—Mr. Case.

The COURT.—Do you say you were there at the time it was taken?

The WITNESS.—Yes; I was there when the picture was taken.

The COURT.—It represents the condition of affairs that morning?

The WITNESS.—It does.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 3.)

Q. I now hand you, Mr. Kinzie, a photograph marked for identification Plaintiff's Exhibit No. 4,

(Testimony of R. A. Kinzie.)

and ask you to look at that—were you present when that picture was taken?     A. I was.

Q. When was it taken?

A. On the morning of October 4th, 1910.

Q. Does that correctly represent the matters and things shown upon the photograph?     A. It does.

Q. What is shown, in a general way, Mr. Kinzie?

A. In the lower center of the picture is shown the Alaska-Juneau dam as it existed on the morning of October 4th, 1910; it also shows the Alaska-Juneau flume as it existed on the morning of October 4th, showing the crushed condition after the rocks had been rolled down upon it during the night; it also shows the foot of Miller's gulch just above the Alaska-Juneau dam.

Mr. HELLENTHAL.—I will offer this.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 4.)

Q. I hand you here, Mr. Kinzie, a photograph marked for identification Plaintiff's Exhibit No. 5, and ask you to look at that and state if you were present when that picture [181—31] was taken?

A. I was present when the picture was taken.

Q. When was that taken?

A. On the morning of October 4th, 1910.

Q. Does that correctly represent the matters and things shown on the photograph?     A. It does.

Mr. HELLENTHAL.—I offer it in evidence.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 5.)

Q. Now, Mr. Kinzie, I hand you here a photo-

(Testimony of R. A. Kinzie.)

graph marked for identification Plaintiff's Exhibit No. 6, and ask you to look at that and state if you were present when that photograph was taken?

A. I don't remember that photograph, Mr. Hellen-thal.

Q. Don't remember that, Mr. Kinzie?

A. No, I don't remember it.

Q. I hand you here another photograph marked for identification Plaintiff's Exhibit No. 7, and ask you to look at that and see if you remember that?

A. Yes.

Q. Were you present when that picture was taken? A. I was.

Q. When was that taken?

A. That was taken the morning of October 4th, 1910.

Q. Does that correctly represent the matters and things on the ground as they existed that morning?

A. It does.

Mr. HELLENTHAL.—I offer that in evidence, your Honor.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 7.)

Q. I hand you another photograph, Mr. Kinzie, marked for identification [182—32] Plaintiff's Exhibit No. 8, and ask you to look at that and state if you were present when that was taken?

A. I was.

Q. When was that taken, Mr. Kinzie?

A. The morning of October 4th, 1910.

Q. Does that correctly represent the matters and

(Testimony of R. A. Kinzie.)

things as they were upon the ground at the time the picture was taken? A. It does.

Q. Mr. Kinzie, what does that picture show, in a general way?

A. This picture shows on the left-hand side, water flowing down Miller's gulch; in the upper center it shows two men working to the side of the point from which the rock was rolled down upon the Alaska Juneau dam on the morning of October 4th.

Q. What are the two men engaged at, as shown in the picture?

A. They are digging out rock and rolling it down the hill.

Q. Where do these rocks land as shown in that picture?

A. They land on top of the flume and dam of the Alaska Juneau Mining Company.

Q. When was that taken—on the morning of October 4th, 1910?

A. The morning of October 4th, 1910.

Mr. HELLENTHAL.—I offer that in evidence.

Judge WINN.—Did you say you were present when this picture was taken.

The WITNESS.—I was present, yes.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 8.)

Q. I now call your attention, Mr. Kinzie, to a photograph marked for identification Plaintiff's Exhibit No. 9, and ask you to look at that and state if you were present when that photograph was taken?

A. I was. [183—33]



(Testimony of R. A. Kinzie.)

Q. When was it taken?

A. The morning of October 4th, 1910.

Q. Does it correctly show the matters and things shown upon the picture as they existed upon the ground when the picture was taken? A. It does.

Q. What does that picture show, in a general way?

A. It shows the firing of a blast on the hillside immediately above the Alaska Juneau flume and dam.

Q. What was the effect of the bomb so fired at that time at that point?

A. It was to roll the rock and dirt loosened by the blast down upon the flume and dam of the Alaska Juneau Gold Mining Company.

Q. And upon the men employed in the construction of it? A. If they were there, yes.

Mr. HELLENTHAL.—I will offer that picture.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 9.)

Q. Now, when, if at all, Mr. Kinzie, did you first apply this water to use—the water sought to be appropriated?

A. To the best of my recollection it was November 17th, 1910.

Q. November 17th, 1910?

A. November 17th, 1910.

Q. Where was it applied to use, and to what use was it applied?

A. Put to use driving a compressor at the foot of Snow Slide gulch.

Q. On what claim was the compressor located?

A. On the Colorado Claim.

(Testimony of R. A. Kinzie.)

Q. What was the compressor used for?

A. For furnishing compressed air for driving machines and for ventilation in the Gold Creek tunnel. [184—34]

Q. How was the water conveyed to the site of the compressor?

A. The water was conveyed by means of a flume to a point on the Colorado Claim in Snow Slide Gulch, and from there out to the compressor by means of a steel pipe-line.

Q. To what extent was the water used in that compressor?

A. Practically the entire capacity of the flume—

Q. The flume in that connection, how did that compare in size with the flume that is now there?

A. It is the same size.

Q. It is the same flume?

A. A portion of the flume has been abandoned, and the water is now carried through the tunnel under Snow Slide Gulch; at that time the tunnel was not completed under Snow Slide gulch.

Q. And the water was taken around the cliff?

A. Around the cliff to the head of the pipe-line by means of a wooden flume.

Q. The work of driving this water tunnel that you have described to the Court was still in progress at that time? A. Yes, sir.

Q. That tunnel had not yet been completed when the water was applied to use? A. No, sir.

Q. But a temporary flume had been constructed around the cliff? A. A temporary flume.

(Testimony of R. A. Kinzie.)

Q. And that flume was abandoned as soon as the tunnel was completed and the new flume constructed through the tunnel?     A. It was.

Q. And the flume then built was the same as the flume which is now built?

A. Same size. [185—35]

Q. And the carrying capacity of water—

A. Same thing.

Q. Now, from the time that you posted the notice of appropriation on the 1st of August, 1910, up to the time the water was applied to use on the 17th of November, 1910, was there any time when you did not employ in connection with the works necessary to the diversion and appropriation of the water, as many men upon the ground as could be profitably employed in that connection?

Q. Commencing with the date of August 1st, when Harri was the first sent upon the ground by you, and when Mr. Mulligan was directed to post the notice—commencing with that date up to the time that the water was applied to use by you on November 17, 1910, was there any time when more men could have been actually employed by you to advantage on the ground than were then actually employed?

(Objection sustained.)

Q. Well, how many men did you employ at all times during that period, with reference to having as many men as could be profitably employed, or employed to advantage, in that connection?

A. We used all the men we could use to advantage at all times from August 1st, 1910, to November 17th,

(Testimony of R. A. Kinzie.)

1910, the day on which the water was put to use.

Q. Now, after putting the water to use at the Snow Slide gulch compressor, what, if anything, did you do from then on towards completing the flume line—the flume to the mill site on the shore of Gastineau Channel?

A. The work of grading and building the flume line and also the necessary tunnels, was carried on continuously from that time to the time that the water was put to use on [186—36] the mill site on Gastineau Channel, which is the same mill site now occupied by the Alaska Juneau Company's mill.

Q. When was the water put to use on those mill sites? A. That was the spring of 1913?

Q. To what use was it then applied?

A. It was first applied to the *hydraulicizing* of the dirt from the hillside, for the foundations of the mill.

Q. To what extent was the water applied at that time—the entire capacity of the flume, or less?

A. Practically the entire capacity of the flume was used.

Q. For that purpose at that time? A. It was.

Q. To what extent, if at all, was the water used on the mill site since?

A. The water has been used continuously since that time?

Q. On the mill site? A. Yes.

Q. Prior to the time that you commenced using the water on the mill site, to what extent had you used it at the Snow Slide gulch compressor, where it was first applied to use?



(Testimony of R. A. Kinzie.)

A. We used all the water we had from the time the first compressor was started; and later a second compressor was started and the water used on it; there were periods during the winter time when there was not sufficient water to run the compressor, but we used all the water the flume would carry at all times.

Q. Was there any time when the water was not used—that is to say, when there was water in the creek and you didn't use it?

A. No long period, other than very short periods during a breakdown—the use of the water was continuous.

Q. From the time it was first applied to use on November 17th [187—37] to the present time?

A. To the present time; yes, sir.

Q. Either used in the compressor at Snow Slide Gulch or on your operations on the hillside?

A. It was.

Q. Now, during the time that the work commenced, or during the time that the water was applied to the Snow Slide gulch compressor—between the time the water was applied to the Snow Slide Gulch compressor and the time it was used on the hillside, what did you do in the way of construction work, looking towards the construction of a road to convey this water to Gastineau Channel. What did you have to drive, first, in the way of tunnels?

A. The necessary grade and flume—the work of constructing the necessary grade and flume was immediately started, and during the entire operation

(Testimony of R. A. Kinzie.)

of the work, when it was impossible to work on the grade the work of driving the tunnels was continued.

Q. How many tunnels did you have to drive through Snow Slide gulch between the tunnel you have already referred to and the point where the water was applied on the mill site on the Gastineau Shore?

A. Only one tunnel driven to carry water.

Q. How long is that tunnel?

A. Almost 2400 feet long.

Q. Almost half a mile long?      A. Yes.

Q. Where is that driven?

A. From a point just above the town of Juneau through the ridge of Mt. Roberts, into Wood's Gulch in the Jualpa Basin.

Q. The portal of that tunnel on the Jualpa Basin side connects with the portal of the Gold Creek tunnel at Snow [188—38] Slide gulch by means of a flume line?      A. It does.

Q. What did you do in the way of constructing the flume grade during this time?

A. During that time the entire flume grade and other structures were completed?

Q. And the flume built?

A. Yes; and the water conveyed from the point of intake to the point of use on the mill site on the shore of Gastineau Channel.

Q. How continuous was the work—this work of construction, from the time it was commenced until the water was conveyed to the shore of Gastineau Channel?

(Testimony of R. A. Kinzie.)

A. The work was continued from the time it was started to the present time, or to the time it was put to use.

Q. How did the number of men employed by you at all times compare with the number of men that could be advantageously used in doing that work?

A. We used every man that we could use to advantage.

Q. At all times?      A. At all times.

Q. What was the approximate cost of the Alaska Juneau Company of the work done and the material used in connection with the appropriation of the water of Gold Creek, as you have just testified to?

A. I would have to check that up, Mr. Hellenthal; my impression is it is something over \$90,000.

Q. You want to look that up to be sure about it?

A. Yes, sir.

Q. Now, after the Mulligan notice was posted, you saw that on the ground didn't you?      A. I did.

Q. After that, what, if anything, did you do yourself in the way of posting a notice—what was the first thing you did [189—39] in that direction?

A. An amended Mulligan notice was posted—an amended notice of water location was posted at 3:30 P. M. on the afternoon on September 14th, 1910.

Q. You posted that, Mr. Kinzie, yourself?

A. I did.

Q. For the Alaska Juneau Gold Mining Company?      A. I did.

Q. What became of that notice—was that recorded?      A. That notice was not recorded, no.

(Testimony of R. A. Kinzie.)

Q. How did it happen that it was not recorded, do you know? A. No, I do not.

Q. When did you first discover that that notice was not recorded?

A. Sometime during the following spring.

Q. Then what did you do in that connection?

A. A second notice was posted.

Q. A second amended notice?

A. A second amended notice was posted.

Q. Mr. Kinzie, I hand you there a paper marked for identification Plaintiff's Exhibit 19, and ask you to *look it* and state, in a general way, it is?

A. It is a water location notice.

Q. Did you see the original of that notice?

A. I did.

Q. When? Q. 8th day of May, 1911.

Q. Did you have it in your possession at that time? A. I did.

Q. What, if anything, did you do with it?

A. I posted it at the intake of the Alaska Juneau flume, where it takes the water from the Alaska Juneau dam. [190—40]

Q. Where the Alaska Juneau dam is now situated?

A. Yes, sir.

Q. How did you post it?

A. I went to the intake of the flume at the Alaska Juneau dam, and tacked the notice on a piece of a powder-box on the left-hand side.

Q. In a conspicuous place where it could be seen?

A. Either up or down, or from the left-hand or right-hand side of the creek.



(Testimony of R. A. Kinzie.)

Q. What, if anything, did you do in the way of recording the notice after posting it?

A. The notice was recorded on the same day.

Q. What day was that?

A. May 8th, 1911.

Q. And recorded on the same day?

A. Recorded on the same day.

Q. Where?

A. At the Recorder's office in Juneau.

Q. That is the recording district in which records are kept for the Harris Mining District, the district in which it is posted?     A. It is.

Mr. HELLENTHAL.—I offer that in evidence—a certified copy of that notice.

(Whereupon said notice was received in evidence and marked Plaintiff's Exhibit No. 10.)

Q. Now, what was done by you, Mr. Kinzie, in the way of constructing an enlarged milling plant under the plans as outlined by you in the early part of your testimony?

A. The grading and clearing of the ground for the first unit of the proposed milling plant has been completed and the first 50 stamps of the concentrating and regrinding machinery is now installed. [191—41]

Q. Let me ask first what is the character of the milling plant you are engaged in constructing and as determined upon—as finally determined upon under your plan of enlarged milling development—mine and milling development?

A. The milling plant is a crushing, concentrating,

(Testimony of R. A. Kinzie.)

and regrinding plant?

Q. What is the size and capacity of the milling plant now in course of construction by you?

A. The plant as at present practically completed would be able to treat about 700 tons of ore per day.

Q. And the plant that you are contemplating to erect?

A. The ultimate plant would be able to treat 12,000 tons of ore per day.

Q. Will all the water appropriated by you be necessary in connection with the operation of that milling plant? A. It will be necessary.

Q. Continuously?

A. It will be necessary for the continuous operation of the property; yes, sir.

Q. For how many years have you ore in sight in the Alaska Juneau mines now—for how many years operation of that plant? A. A great many years.

Q. Approximately how many, if you can count them—I will change that question. Approximately how many that you can positively say now that you have in sight?

A. Oh, it is a great many years, Mr. Hellenthal; I would not want to put it down for a number of years; when it is over 15 or 20 or 30 years, there is hardly any use going and farther.

Q. And the water will be necessary at all times in connection with the operation of this plant?

A. It will. [192—42]

Q. All the water?

A. All the water and more, too; we would have use

(Testimony of R. A. Kinzie.)

for more water, if we had it.

Q. What use is it put to?

A. It is used for battery, concentrating water, power, fire protection, and a number of uses.

Q. How far now at the present time have you gone with the construction of that plant?

A. At the present time the complete crushing plant has been erected, and a 50-stamp mill complete with regrinding machinery, and concentrating appliances has been installed, and 40 of the stamps are now in operation.

Q. What is the purpose of the mill that you have so far installed?

A. It has a two-fold purpose; one purpose is to guide us in the construction of the final unit, and the second purpose is to make money out of the operation of the mill.

Q. How much money, Mr. Kinzie, have you so far up to date expended, approximately, in connection with the new work done by you in connection with this mill construction, since the time that the water notice—since October 1st, 1910?

A. To get those figures exact, Mr. Hellenthal, I would like to look them up—you mean all of the work, both of mines and mills, since 1910?

Q. Yes.

A. A careful estimate, something over a million dollars.

Q. Over a million dollars?      A. Yes.

Q. What are you doing now in the way of carrying on that work to completion?

(Testimony of R. A. Kinzie.)

A. That work is going on to completion as fast as we can press the work. [193—43]

Q. Consistent with good engineering methods?

A. Yes.

Q. Now, when, if at all, did the defendant first interfere with your use of the water diverted and appropriated by you as you have testified to?

A. The first direct interference was during the winter season of 1913.

Q. During the winter of 1913?

A. And the spring of 1914.

Q. You may relate what was done at that time, and all about it.

A. During the period of shortage of water in Gold Creek tunnel they constructed a working dam just above the intake of their flume to take all the water out of the creek, and passed it through the high line flume.

Q. How did that affect you?

A. It shut us down.

Q. Where was this dam with reference to your intake?      A. It was above our intake.

Q. What was the effect upon the creek as far as you were concerned?

A. It cut off the water in Gold Creek and took it away from us.

Q. And you got nothing?      A. Nothing.

Q. Do you know what the intention of the defendant was—did they tell you about it, whether they intended to continue that diversion, and continue to interfere with your use of the water, or not?



(Testimony of R. A. Kinzie.)

A. They told me that they would continue to turn the water out of Gold Creek to be used by themselves.

Q. The effect of that interference would be to deprive you of the water?

A. Deprive us of the use of the water when flowing in Gold Creek.

Mr. HELLENTHAL.—I think that is all, Mr. Kinzie. [194—44]

(Whereupon an adjournment was taken until 1:30 P. M.)

#### AFTERNOON SESSION.

June 23, 1914—1:30 P. M.

R. A. KINZIE, on witness-stand.

Mr. HELLENTHAL.—I have a couple of questions to ask Mr. Kinzie, your Honor.

(Questions by Mr. HELLENTHAL.)

Q. Mr. Kinzie, at the time, on August 1st, 1910, the waters of Gold Creek were flowing in the natural channel? A. They were.

Q. And Gold Creek is a regular stream of water?

A. Yes, sir; it is a regular stream from the mountains to the sea.

Q. I hand you here a photograph marked for identification, Plaintiff's Exhibit No 11, and ask you to look at that and state if you were present when that photograph was taken? A. I was.

Q. When was it taken?

A. In the afternoon of July 19, 1914.

Q. Does that correctly represent the matters and things shown upon the photograph?

(Testimony of R. A. Kinzie.)

A. It does.

Q. State in a general way what it shows?

A. At the left-hand lower corner of the picture it shows the flume from the Alaska-Juneau dam entering the water tunnel; it shows the grade for the temporary flume around the bluff just up Gold Creek from Snow Slide Gulch; shows the remainder of the flume at Snow Slide Gulch; shows the Alaska-Juneau bunk-house built in August, 1910; shows the location of the second stretch of buildings, and the trestle, flumes and buildings at the mouth of Gold Creek tunnel; it also shows just the end of Jualpa [195—45] dam.

Q. The end of the Jualpa dam?

A. On the right-hand side—just the end of it.

Q. The extreme lower portion of the picture?

A. The middle right-hand portion of the picture.

Q. The Gold Creek tunnel, what is the Gold Creek tunnel?

A. The Gold Creek tunnel is a tunnel running from Snow Slide gulch through the mountain to the mine workings in Silver Bow Basin.

Q. What is the length of that tunnel?

A. That tunnel is 6,538 feet.

Q. 6,538 feet?      A. Yes, sir.

Q. When was that driven?

A. That was driven during the years of 1910, '11, '12 and '13, and work is still being done on it.

Q. The Alaska-Juneau ore bodies are in Silver Bow basin?      A. Part of the ore bodies.

(Testimony of R. A. Kinzie.)

Q. The largest ore bodies—and this tunnel connects these ore bodies with the milling plant on Gastineau Channel?

A. Connects the ore bodies with the Alaska Juneau milling plant.

MR. HELLENTHAL.—I offer this picture in evidence, your Honor.

Judge WINN.—Who took this picture, Mr. Kinzie?

A. Mr. Case.

Q. Were you there when Mr. Case finished up these pictures? A. At his studio?

Q. Yes, sir. A. No, sir.

Q. How do you know this is the picture he took up there at the date you have testified to?

A. Because that is the view pointed out by me to Mr. Case to have taken.

Q. Do you know, of your own absolute knowledge, that is the [196—46] picture that Mr. Case took the day you mention?

A. That is the view he took, yes.

Q. How do you know but what he may have got that picture on another day?

A. It is the exact view I pointed out to him.

Q. You don't know that this is the exact picture, Mr. Case took when you were up there that day?

A. It is the exact scene I pointed out to him, but as to the exact picture, I don't know.

Q. Do you remember, in your own mind, without the picture, that these particular improvements were there on that particular day?

(Testimony of R. A. Kinzie.)

A. The improvements?

Q. Yes, without the picture.

A. Yes, indeed.

Q. Case went up there, and you went up there with him, and he took a photograph, and took and developed it, and when did he give you any photograph that was developed?     A. Next morning.

Q. And this is the same one he gave you?

A. That is one of the pictures.

Q. He gave you that morning?

A. Yes, that is one of the pictures he gave me the following Monday morning—the picture was taken on Sunday, and he gave it to me on Monday.

Q. What day did you fix this picture as having been taken on?     A. July 19, 1914.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 11).

Q. Now, Mr. Kinzie, I again direct you to exhibit marked for identification No. 11, and ask you to look at it, and [197—47] ask you to state to the Court when this portion of the flume shown here to the extreme left of the picture entering the tunnel was completed—prior to what date was it completed?

A. That flume was completed—

Q. During what month?

A. In the latter part of October, 1910.

Q. Fully completed?

A. To the point that it shows in this picture.

Q. Now, the temporary grade around the bluff there, when was that built and when was the flume put on it?



(Testimony of R. A. Kinzie.)

A. That grade was built and the flume put on it during the latter part of October or the early part of November, 1910, to carry the water from the mouth of the incomplete water tunnel to the intake of the pipe-line at the compressor at the mouth of Snow Slide gulch.

Q. And that picture also shows the portion of the water tunnel that was since completed?

A. It does.

Q. When was that tunnel completed, approximately?

A. It was sometime in the year of 1912, or the latter part of the year of 1911—I don't remember exactly.

Q. You are speaking now of the water tunnel?

A. Yes, the water tunnel.

Q. After the completion of that tunnel, what was done in the way of building a flume to it?

A. The flume as shown in the picture—the water was carried into the tunnel and the water taken out the far end at a point indicated by these buildings in the upper left-hand corner of the picture.

Q. Does the mouth of the Gold Creek tunnel show in that picture, the portal of it?     A. It does.

Q. How is that indicated on the picture? [198—48]

A. It is indicated on the picture by the timbering, portal and buildings; also the track running out of the portal of the tunnel to the dump.

Q. At about what part of the picture are the points that indicate the portal of the tunnel?

(Testimony of R. A. Kinzie.)

A. The upper left-hand corner.

Q. That picture also shows the bunk-house?

A. The picture shows the bunk-house built in the canyon of Gold Creek.

Q. In what month was that built?

A. That was built in August, 1910.

Q. Does it show the trails you have been testifying to?

A. No, it does not.

Q. Does that picture also show the flume line?

A. It shows one of the trails or what remains of the trail, from the Jualpa Basin to the point near the mouth of the Gold Creek tunnel.

Q. What part of the picture?

A. That comes to about the center of the picture.

Q. Now, what is that circle—does that show the flume line to Snow Slide Gulch?

A. The picture shows the tramway and also the flume line from the portal of the Gold Creek tunnel, and the main turn-out switches.

Q. When was that constructed?

A. Part of the flume line was constructed in 1911, and there have been additions put to the trestle and flume during each year since.

Q. That forms part of the line from the Gold Creek tunnel to the mouth of the No. 3 tunnel?

A. It does.

Q. About how long is that flume there, Mr. Kinzie—how many feet extending from the dam?

A. Something over 7,000 feet of flume line and tunnels combined. [199—49]

Q. Over 7,000 feet? A. Yes.

(Testimony of R. A. Kinzie.)

Q. About a mile and a half, pretty near?

A. Mile and a quarter or a mile and a half.

Q. Now, the part of the flume line between the portal of the Gold Creek tunnel and the portal of tunnel No. 3 is not shown on the picture?

A. It is not.

Q. Is below?      A. Yes, sir.

Q. This also shows the compressor, does it not, Mr. Kinzie?

A. It shows the second compressor constructed at the portal of Gold Creek tunnel.

Q. When was that constructed?

A. I think that was constructed in the year of 1912.

Q. And where is that with reference to the point where the first compressor was constructed?

A. That is further down the creek, and about 100 feet away from it.

Q. That is under the snow?

A. The original compressor is under the snow shown in that picture.

Q. I hand you here a photograph marked Plaintiff's Exhibit No. 12 for identification, and ask you to look at it and state if you were present when that was taken?      A. I was.

Q. When was it taken?      A. July 19, 1914.

Q. Does it actually represent the conditions existing on the ground at the time the picture was taken?

A. It does.

Q. What does that show, Mr. Kinzie?

A. It shows the flume at a point near the Alaska

(Testimony of R. A. Kinzie.)

Juneau dam [200—50] along the side of the canyon at a point where it enters the water tunnel; also shows a portion of the grade from the water tunnel around the bluff above the Alaska Juneau bunk-house; on the left-hand side of the picture it shows a portion of the old Jualpa dam; the picture also shows the point on the bed of Gold Creek where the trail on the left-hand side crossed to the right-hand side of the creek.

Q. Now, Mr. Kinzie, when was that flume in there between the Alaska-Juneau dam and the—the flume on the cliff, when was it completed?

A. The flume was completed during the month of October, 1910.

Q. And does that picture show the precipitous character of the cliff along which it is built?

A. It does.

Q. I wish you would explain to the Court the character of that cliff, whether it is an easy cliff to build a flume grade across?

A. The photograph shows that it was necessary to cut a bench out of the solid rock of the cliff to enable us to place the flume around this point.

Q. For how great a distance did you have to cut this bench in solid rock?

A. The portion shown in the picture would be about 200 feet; altogether we had 500 or 600 feet of that character of work.

Q. 600 feet?

A. From five to six hundred feet.

Q. In that vicinity?      A. In that vicinity.



(Testimony of R. A. Kinzie.)

Q. And you had some more lower down?

A. We had some more lower down, and some more higher up.

Q. Approximately, Mr. Kinzie, how many feet would you say [201—51] you had to cut in solid rock to lay your flume grade the entire way?

A. In the vicinity of Snow Slide Gulch to the Alaska-Juneau dam?

Q. The entire distance from the dam to the mill-site used at present, what proportion had to be cut in solid rock?

A. Including the tunnel I should say that there is approximately one-half of that way placed on bed-rock.

Q. Probably 4,000 feet, in the neighborhood of that?

A. Yes; 3500 to 4,000 feet,—3500, I think, would be close to it.

Q. In building that flume around the cliff, what did you have to get your men to do?

A. In cutting a trench or bench on that curve, the most men we could work at any one time would be two or three, and the men were placed at each end of the cliff, and where it was possible to hoist them up the cliff that was done so the rocks could be blasted.

Q. That is the way that had to be built?

A. Yes.

Mr. HELLENTHAL.—I will offer that picture, your Honor.

(Whereupon said photograph was received in evi-

(Testimony of R. A. Kinzie.)

dence and marked Plaintiff's Exhibit No. 12).

Q. I hand you here a picture marked for identification No. 13, and ask you to look at it and state if you were present when that picture was taken.

A. I was.

Q. When was it taken?      A. July 19, 1914.

Q. Does that correctly represent the matters and things shown on the picture as they existed on the ground the day it was taken?      A. It does. [202—52]

Q. What does it show, Mr. Kinzie, in a general way?

A. It shows the bunk-house built by the Alaska-Juneau Company in August, 1910.

Q. That was built in August, 1910?      A. It was.

Q. That is a different view of it and a closer view than the other picture?

A. It is a closer view, showing the condition of the cliff, and the bench and the temporary flume to the portal of the water tunnel around in Snow Slide gulch; it also shows the position on Gold Creek where the trails were started from the bunk-house up the creek.

Q. Will you explain to the Court fully with reference to that trail?

A. It shows the point at the foot of the cliff where the trail led from the bunk-house up the left-hand side of the creek.

Q. Does it show that so it can be identified without marking it, Mr. Kinzie?

(Testimony of R. A. Kinzie.)

A. Yes, a portion of the old trail is still shown, but a portion of the trail has been washed out.

Q. Where does it show in the picture?

A. In the lower right-hand portion of the picture.

Q. That was one of the trails that Mr. Harri built?

A. Yes.

Q. What else does it show?

A. It also shows in the upper right-hand corner the dump of the Gold Creek tunnel; the second compressor building, and the track leading from the mouth of Gold Creek tunnel.

Q. That is all it shows?      A. That is all.

Q. Mr. HELLENTHAL.—We will offer this picture.

(Whereupon said picture was received in evidence and marked Plaintiff's Exhibit No. 13.) [203—53]

Q. I hand you here a photograph marked for identification No. 14, and ask you to look at it and state if you were present at the time that picture was taken?      A. I was.

Q. When was that taken?      A. July 14, 1914.

Q. Does that correctly represent the matters and things shown upon the picture as they actually existed on the ground at that time?      A. It does.

Q. What does it show in a general way, Mr. Kinzie?

A. The picture shows principally the point where Snow Slide gulch comes into the Canyon of Gold Creek; it shows the Alaska-Juneau bunk-house in the left-hand corner; shows the grade for the temporary flume; it shows the second compressor building and

(Testimony of R. A. Kinzie.)

the portal of Gold Creek tunnel; the track leading from the Portal of Gold Creek tunnel to the dump in front of Gold Creek tunnel, and the trail that led originally from the mouth of Gold Creek tunnel into the Canyon of Snow Slide gulch.

Q. That is one of the trails built by Mr. Harri in August, 1910?

A. That is a portion of the trail built by Mr. Harri in 1910. Yes, sir.

Q. Those matters as they show there all existed during 1910 and 1911—and through that period?

A. With the exception of the trail, the house and the compressor.

Q. The second compressor. Does that picture show the place where the first compressor stood?

A. No, the first compressor is under the slide a portion of the time, shown in the middle portion of the picture.

Q. The first compressor was buried by a snow slide?

A. Yes, there was snow slide there about over the same portion [204—54] as is shown in the picture.

Mr. HELLENTHAL.—I will offer this photograph.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 14.)

Q. I hand you here a picture marked for identification exhibit No. 15, and ask you to look at it and state what that shows—were you present when that picture was taken? A. I was.

Q. When was that taken? A. July 19, 1914.



(Testimony of R. A. Kinzie.)

Q. That correctly represents the things shown in the picture as they existed on the ground?

A. It does.

Q. What does it show, in a general way?

A. In the left-hand portion of the picture it shows the Alaska-Juneau dam and intake of the flume.

Q. When was that dam and intake built?

A. The dam was built—

Q. When was it completed, rather?

A. It was completed in 1910.

Q. What month, do you know?

A. No, I don't,—with the exception of the logs shown in the lower left-hand corner; it also shows the flume lying along the cliff just below the dam; it shows the cliff and falls immediately below the dam and the snow shed over the flume as it goes down Gold Creek.

Q. That snow shed was built at a later date than the flume?

A. The snow shed was built later; yes, sir.

Q. How much later?

A. The snow shed was built this spring.

Q. The flume was built before. Now, that dam, Mr. Kinzie,—is that the same dam,—where is that with reference to the point where the dam was constructed on October 3, 1910? [205—55]

A. It is exactly the same place.

Q. And is the same dam except it has been improved upon?

A. It is the same dam with the exception of the repairs and improvements.

(Testimony of R. A. Kinzie.)

Q. And it shows the falls immediately below the dam?

A. It shows about half of the falls immediately below the dam; yes, sir.

Q. What else does it show?

A. That is all it shows.

Mr. HELLENTHAL.—I will offer that picture.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 15.)

Q. I hand you here a photograph marked for identification Plaintiff's Exhibit No. 16, and ask you to state if you recognize the matters and things shown in that picture? A. I do.

Q. What does it show, Mr. Kinzie, with reference to the properties of the Alaska-Juneau Company?

(Not answered because of objection.)

Q. Are you familiar, Mr. Kinzie, with all the things shown on that picture? A. I am.

Q. Do you know that all the things shown on the picture are correctly shown on the picture?

A. Yes, sir; as far as they relate to the Alaska-Juneau Gold Mining Company, I do.

Q. The picture represents the conditions on the ground at about what date?

A. During the month of April, 1914.

Q. And shows the Alaska-Juneau mill—when was that built? [206—56]

A. Shows the building covering the first 40 stamps—the addition to the building had not been made at that time; shows the rock house, compressor house, tramway, change house, blacksmith-shops, wharf,

(Testimony of R. A. Kinzie.)

carpenter-shops, warehouses, tramways, and so forth.

Q. When was that No. 3 tunnel constructed, the portal of which is shown in that picture?

A. Constructed during the years of 1912 and '13.

Q. Completed when? A. 1913.

Q. That is the tunnel used to convey water to the mill site. A. It is; yes.

Q. And shows the flume line from the portal of the tunnel to the mill?

A. Shows the flume line leading from the portal of the tunnel to a point beyond the mill.

Q. When was that built?

A. That was completed during the spring of 1913.

Q. And shows the work that has been done with the water in 1913? A. It does.

Q. Where the water has been applied to use, and where it is still being applied—are all those things correctly shown on the picture? A. They are.

Mr. HELLENTHAL.—We offer the picture in evidence.

(Whereupon said picture was received in evidence and marked Plaintiff's Exhibit No. 16.)

Mr. HELLENTHAL.—That is all. [207—57]

Cross-examination.

(By JUDGE WINN.)

Q. When did I understand that you first came to Alaska? A. In February, 1901.

Q. Where had you been prior to that time?

A. I had been in Mexico.

Q. Had you known Mr. Bradley before you came up here? A. For a long time; yes.

(Testimony of R. A. Kinzie.)

Q. Had you been connected with him in business or otherwise before you came to Alaska?

A. I was employed by Mr. Bradley before I came to Alaska, yes.

Q. Were you employed by him just prior to 1901, before you came up here? A. Just prior—no.

Q. How long had it been since you had been employed prior to 1901, by Mr. Bradley?

A. About a year—maybe a little more.

Q. Who engaged you first to come to Alaska—Mr. Bradley? A. Mr. Bradley, yes.

Q. Mr. Bradley then occupied some position with the Treadwell Company and also some position with the Alaska-Juneau Company, did he? A. He did.

Q. And you came out to assume the position of Assistant Superintendent of the Treadwell, was it?

A. Yes, and of the other companies.

Q. Were you Assistant Superintendent when you first came up here of the Alaska-Juneau Company, or Superintendent?

A. No, sir; Mr. McDonald was then Superintendent of the Alaska-Juneau Company.

Q. Where was it that you and Mr. Bradley conceived of this plan of opening up and developing the property, which you testified to on direct examination? [208—58]

A. The first I knew about the plan was in the report prepared by Mr. Bradley. I think the report was prepared during the year 1900.

Q. 1900. When you first came up here, Mr. Kinzie, in 1901, how many mining claims did the Alaska-



(Testimony of R. A. Kinzie.)

Juneau Company own?

A. I don't remember offhand.

Q. Did this report that you saw of Mr. Bradley's state the number of mining claims they had at that time?

A. No, it didn't—as far as my recollection serves me, it didn't.

Q. Do you know now how many claims they had when you came up here in 1901?

A. I cannot say definitely, no.

Q. Well, approximately?

A. I should say they had between 40 and 50 claims.

Q. Where were those 40 or 50 claims located?

A. The claims were located in Silver Bow Basin; on the ridge between Silver Bow Basin, down the Canyon to Snow Slide Gulch; in the Canyon of Gold Creek, and down the Basin as far as the Jualpa Basin.

Q. You are well acquainted with this map that Mr. Wayland testified concerning yesterday—he said, I think, it was made partly under your instructions?

A. I am acquainted with it.

Q. Will you point out and indicate on this map where the property is situated that the company owned when you came here in 1901. Point it out with respect to some places that are named on there to make it so it can get into the record and read intelligently, Mr. Kinzie.

A. The property then owned by the Alaska-Juneau Company was the same as shown on Plaintiff's Exhibit No. 1 with the exception of that portion to the

(Testimony of R. A. Kinzie.)

right of Icy Gulch, or [209—59] just to the right of the word “Company” in the title “Property of the Alaska-Juneau Gold Mining Company”; also with the exception of the two portions inclosed in the orange-colored ink in the upper center of the map; at that time they didn’t own the property shown immediately back of the Town of Juneau and covered by the words “Alaska-Juneau Flume” in the lower left-hand corner; they didn’t own the portion included in the lower portion of the map on which the words “Sea Level Tunnel, Proposed Extension” occur; they didn’t own the portion of ground as indicated and inclosed in orange lines along the north shore of Gastineau Channel; at that time they didn’t own that portion of the ground as indicated in the rectangular piece just east of the words “Proposed Extension” in the lower middle part of the map. All the rest of the property as indicated, with the exception of the property marked “Property of the Alaska-Juneau Gold Mining Company,” just west of the words “Ebner Dam” on the middle left-hand portion of the plat was owned by them at that time.

Q. You have excepted from this exhibit now, as well as you remember, the property that the Alaska-Juneau did not own in 1901, when you first came to Alaska?

A. I have excepted the portions that they have acquired since that date.

Q. Does the Alaska-Juneau own all this property over here that is called “Property of the Alaska-Juneau Gold Mining Company,” that is indicated

(Testimony of R. A. Kinzie.)

on the west extreme by a rectangular figure, and also this rectangular figure that intersects another?

A. They own outright a portion of the ground included within the rectangular figures as shown. A lode claim is a rectangle—is 600 or 1500, and the claims as re-established conform [210—60] to those dimensions as shown on the plat.

Q. That is the only portion of that piece of property that you claim that the company owns now?

A. Yes.

Q. That is the old Russell claim?

A. Russell and Jeff.

Q. Two of them? A. Yes.

Q. Those claims were taken up by the company when? A. 1910.

Q. You know that that property is also claimed by the Ebner Gold Mining Company, don't you, or the Humboldt Company?

A. I believe a portion of the property is, yes.

Q. There was a placer claim up there, too, which they claim?

A. Yes, I believe they claim a placer claim.

Q. Now, then, in 1901, at the time you conceived this plan of opening up the property, did you have a personal conversation with Mr. Bradley, or just see his report? A. I didn't conceive the plan.

Q. How much before Bradley came up—

A. It was his report that I read, yes.

Q. When did you ever have any talk with Mr. Bradley about this plan?

A. I think it was during his first visit that year;

(Testimony of R. A. Kinzie.)

I don't remember exactly the first conversation we had with reference to the Alaska-Juneau property.

Q. Some time you think in 1901 or '02?

A. It must have been 1901.

Q. Why do you say it must have been?

A. Because his first visit after I was up here was during the summer of 1901.

Q. Then you confirmed this plan of opening up and developing the property? [211—61]

A. I had nothing to do about confirming the plan at all.

Q. Did he confirm it?

A. There were a number of plans outlined, two principal plans—really three—and the work from that time on was simply to determine the best plan to adopt.

Q. Now, then, at that time you had the property that you have just gone over on this exhibit; you mention now the other properties on the west side—

A. That is east, Judge.

Q. East of Icy Gulch where the word "Company" occurs—that has all been located since then?

A. That portion has been located,—no, there is a portion of that ground that has not, but the extreme east part of it has been located since then.

Q. Approximately what time did you commence the location of that property indicated?

A. Oh, there were claims located along in there every year since I have been here, with different objects in view.

Q. Does that extend over the ridge near where the



(Testimony of R. A. Kinzie.)

well known Ground Hog mining claim is located—or does it extend on that ridge down towards Sheep Creek?     A. Oh, no.

Q. How far does it come down on the ridge below here where it is marked “Mine Workings”?

A. It comes up on the west side of Icy Gulch Canyon.

Q. What distance?

A. The distance shown there.

Q. I know, but I mean approximately in feet or miles, or something of that kind.

A. I should say that is about 2,000 or 2,500 feet.

Q. You say some of those claims have been located every year since you came here?

A. Those particular claims? [212—62]

Q. Yes, that cover that space of ground.

A. Oh, no; I don't say those particular claims were located every year, but there have been additions each year to the Alaska Juneau Company's holdings.

Q. But I am talking about this addition.

A. I think that addition has been made up of locations at different times.

Q. Since when?

A. I don't recall the date of the locations made there.

Q. Can you offhand give me, Mr. Kinzie, the names of the mining claims marking the exterior boundary line on the east side of this exhibit, which is indicated by the lines that cross this Icy Gulch and run on down to the extreme west part of it, and then start back in a zigzag way to the westerly part—can you

(Testimony of R. A. Kinzie.)

tell me approximately the names of the claims that you have in there that these lines I have indicated form the exterior boundary line of—any of them?

A. No, I cannot without referring to the map.

Q. This map, you mean?

A. There are a number of claims in there, and I don't remember the exact claims which form the boundary as indicated there.

Q. How many of those claims have you located since August, 1910?

A. I don't remember the exact number offhand.

Q. Now, you excepted another piece just above the words "Mine Workings" on this map—do you remember what the mining claims on this map mark the exterior boundary lines of?

A. The lower portion—no, I don't; I don't remember the exact names of the claims forming the exterior boundaries as indicated there.

Q. When were they located? [213—63]

A. A number of years ago; I don't remember the exact date.

Q. Since 1910, or before?

A. I rather think those were located since 1910.

Q. Now, the other portions that you except in this, which are indicated along the zigzag inclosure that incloses the words "Alaska-Juneau Flume"—when were those taken up?

A. Those have been taken up at various times; we have a number of claims along there.

Q. I mean along about the "Alaska-Juneau Flume"

(Testimony of R. A. Kinzie.)

A. They have been taken up at various times in the last three or four years.

Q. How many have been taken up since August 1st, 1910, or purchased?

A. The principal portion of that ground was located before August 1st, 1910.

Q. Do you know what portions have been located since August 1st, 1910?     A. Yes.

Q. What portion?

A. The portions located since are not shown there; all of this ground was located before August 1st, 1910, as indicated on this map with the exception of a piece here (indicating) that was located during the last year.

Q. What is this long narrow strip, Mr. Kinzie, that after leaving this zigzag piece of property inclosed by the "Alaska-Juneau Flume," comes on down to near "Juneau" on the beach—what is that narrow strip?

A. That is the right of way for the No. 3 tunnel.

Q. That is your tunnel that leads down to your new mill here on the beach?     A. It is; yes.

Q. When was the right of way obtained?

A. I think that was in 1910 or '11—somewhere in there. [214—64]

Q. Do you remember what time—can you give me a more exact date?     A. No, I cannot.

Q. You don't know whether it was 1910 or '11?

A. The right of way to the left was obtained in 1910, and if I am not mistaken, this right of way was finally completed in 1911; but the right of way for

(Testimony of R. A. Kinzie.)

the flume line as originally laid out was obtained in 1910.

Q. As originally laid out, but you don't mean as it is now,—that you obtained all that right of way during the year 1910?

A. I think most of that was obtained in 1910; there was a portion that conflicted with other ground that we got, I think during the following year.

Q. When did the company take up this property called "Sea Level Tunnel, Proposed Extension"—that long strip, rectangular in form, extending from near the beach on Gastineau Channel up northerly up the hill?

A. The negotiations for the ground for the lower part of that were started either during the year 1909 or '10; the upper portion of the rectangular piece was located during the fall of 1913.

Q. The upper portion of it?

A. That is, the middle portion.

Q. Now, what portion, commencing where the rectangular portion of it ends down toward Gastineau Channel, up to the end of the line upon which the words "Proposed Extension" occur—what portion of that did you own prior to August 1st, 1910?

A. The portion below the letter "T" in tunnel, of "Sea Level Tunnel."

Q. You mean between the letter "T" in "Gastineau Channel" and the letter "T" in tunnel?

A. The latter "T" in "Gastineau Channel," with the exception [215—65] of some small pieces along the shore.



(Testimony of R. A. Kinzie.)

Q. Now, the part from "T" on up, when did you take that up?

A. The portion from the letter "T" to the top of the triangle was located during the year of 1913.

Q. As mining claims?

A. Mining claims; yes.

Q. Have you commenced a sea level tunnel to run through there now?      A. We have.

Q. Now, when did you obtain the other triangular piece just to the seaward of this property we have just been talking about?

A. That is all patented property and was acquired,—I think the patent to the property was issued in 1905 or '06.

Q. That piece of property was one of the pieces of property that you took up and acquired title to in order to use it in connection with one of your schemes of opening up and developing the plaintiff's property, was it not?

A. That was a piece of ground acquired at that date in case that the proposed scheme of driving a tunnel from the shore of Gastineau Channel to the ore bodies in Silver Bow Basin had been carried out. That property has been patented, as I say, for a number of years.

Q. That was, you say, acquired in this manner pursuant to a scheme you and Mr. Bradley had for developing the property?      A. Yes.

Q. Now, when did you change your mind about opening it up on that plan, or is that some other plan?

(Testimony of R. A. Kinzie.)

A. I don't think, Judge, you can fix any definite time as to changing our mind; there was a great deal of work done on that scheme during the years of 1903 and '04 and previous to that time, and the tunnel was stopped, I think, during the year of 1904; there had been work done there [216—66] during the years of 1902, '03 and '04, and the last work done on that tunnel—I don't wish to be exact on it, but I think it was during the year of 1904 or '05.

Q. That is a tunnel that you started to run through this triangular piece that is to the eastward of the triangular piece which has the words "Sea Level Tunnel, Proposed Extension"?

A. This rectangular piece.

Q. Do you know how far you ran that in—the tunnel?

A. That is in, I think it is from three to six hundred feet—I don't remember exactly the distance.

Q. Now, that is the first tunnel that you and Mr. Bradley talked over in connection with your first scheme of opening up the property—that is the first tunnel you ran looking towards the carrying out of the first scheme?

A. No; the first tunnel that was really started on any of those schemes was a tunnel started on the Colorado claim, and near the foot of Snow Slide Gulch; the tunnel is now used as a powder magazine by us. It is situated just over the line on the Idaho claim and the Colorado claim, and I think can be seen on one of the photographs introduced.

Q. That is up near the Alaska-Juneau bunk-house?

(Testimony of R. A. Kinzie.)

A. To the right of that, on the Colorado claim—between the Idaho and the Colorado.

Q. Approximately where would it be with reference to some object shown on this plat?

A. It would be about an inch below the letter “G” in the words “Gold Creek.”

Q. When did you start that tunnel?

A. Work was done on that tunnel—some work was done before I arrived, and work was done on that tunnel for two or three years. [217—67]

Q. You don’t know, Mr. Kinzie, of your personal knowledge, if that tunnel was there before you came here or not?

A. I know the tunnel was started.

Q. Do you know of your own personal knowledge, not being here at that time, that the tunnel was started?

A. All I know about it is from the report I received.

Q. That is what somebody told you or the reading of somebody’s report?

A. No, there is more than that, because surveys—

Q. You know what I mean by personal knowledge, don’t you? A. Yes.

Q. You didn’t have any superintendency over that work at the time it was done? A. None at all.

Q. Had nothing to do with the Alaska-Juneau Company? A. In 1901?

Q. And the tunnel was run before you came here?

A. There were two tunnels started—one a little lower down, and the other at the place I speak of.

(Testimony of R. A. Kinzie.)

Q. Then, you don't know of your own knowledge what they were originally started for?

A. The way you ask me, I would say no.

Q. To what extent was that tunnel run?

A. That tunnel—the tunnel must be in about 50 feet from the portal—perhaps a little more.

Q. When was the last work done on that tunnel to your own personal knowledge—if it was done before you came here, Mr. Kinzie, I don't want to know?

A. Work was done in that tunnel, it was either up in 1905 or '06, I have forgotten which.

Q. Did you do any work on this other tunnel that you just spoke about a while ago, that you ran in several hundred feet on this rectangular piece down near Gastineau Channel—had you [218—68] done any work on that before you ceased work up there on the Colorado Claim? A. Yes.

Q. Well, then you did some work on the tunnel up near the Colorado Claim after you commenced the work down on the other tunnel which extended up this rectangular piece? A. Both before and after.

Q. Well, now, as a matter of fact, Mr. Kinzie, the work you were doing up there on the Colorado Claim—the tunnel—after you commenced your tunnel down here on this rectangular piece, was done with the view of doing assessment work, wasn't it?

A. That was part of the idea, yes; you might say the same thing of both tunnels—it had not been definitely decided which was the better route.

Q. You were running two tunnels here,—did you run two tunnels before you could ascertain that fact?

A. There were a number of questions that came



(Testimony of R. A. Kinzie.)

up, and in order to hold the ground the work had to be done.

Q. The only question was between the two plans, which was the better and more feasible route. Now, when did you ultimately decide upon this rectangular piece, which is to the eastward of the word "Sea Level Tunnel, Proposed Extension" should be abandoned.

A. That scheme has never been abandoned; it is not abandoned to *to* this day; in fact, we are now starting to drive a tunnel—the only change we have made, we have gone a little farther down; that is a part of the first scheme—the sea level tunnel is a more direct route to our present mill.

Q. You still expect to run both of these tunnels—the one that is called "Sea Level Tunnel," and the one to the east of it? [219—69] A. No.

Q. That isn't a part of your scheme?

A. The sea level tunnel is a part of a general scheme of opening up the mines.

Q. How much work have you done on that this year?

A. I cannot say how much has been done this year.

Q. How many feet have been driven on that tunnel since the hearing of the preliminary injunction in this case? A. None.

Q. You have had plenty of water, haven't you?

A. It was on account of lack of water that we stopped; we had to use water in the development of our plan.

Q. That is one of the pieces of work that you say

(Testimony of R. A. Kinzie.)

was held up by reason of your not having sufficient water?

A. Yes, but we are using all the compressed air we have—every bit of it.

Q. Is that one of the reasons you claimed that you were injured at the time of this preliminary injunction—that we had taken the water away from you and you hadn't water to run but one of your compressors? A. It was, yes.

Q. But you haven't done anything on that since the application for a preliminary injunction?

A. No; we had the water—the water was taken away from us.

Q. You have had plenty of water since then?

Q. Yes, but we haven't the compressor capacity.

Q. Didn't you testify at that time that you had the compressor capacity if you had the water?

A. Yes; but we didn't have all this to work with—we have opened up the mines.

Q. How much work have you done on this other tunnel, on the rectangular piece to the east, since the hearing for a preliminary injunction? [220—70] A. None at all.

Q. Not a thing? A. None at all.

Q. Now, I will go back, Mr. Kinzie, and reach some of those points later on. Now, then, we have heard your testimony upon these two tunnels that you have testified to, which commenced somewhere near Gastineau Channel and run to the westward—I think you said this morning in the year 1909 that you did decide absolutely upon the opening up and the

(Testimony of R. A. Kinzie.)

development of the property, by running the tunnel under Snow Slide Gulch, Gold Creek tunnel, I believe you referred to it?

A. I testified partly to that, yes. During the year of 1909 I received instructions from Mr. Bradley to go ahead with that as our principal scheme.

Q. What time in 1909?

A. I can get the letters; I think they are in the courtroom at the present time.

Q. I wish you would get them to refresh your memory, if you can.

(Whereupon a recess was had for ten minutes in order for the witness to get the letters referred to.)

Q. Now, Mr. Kinzie, you know about the day in 1909 that Mr. Bradley had determined to go ahead and open up this property through the Gold Creek tunnel, which commences, I believe, up on your Colorado Claim?

A. The letter that I have is dated October 28, 1909; in that letter he referred to—

Q. I don't care for the letter—I just want you to refresh your memory as to the date. That was in October, 1909—now, what did you do in the year of 1909 towards carrying out any instructions that Mr. Bradley gave you in regard to that [221—71]

A. I immediately consulted with our attorney, who was then Mr. Shackelford, in regard to the—

Q. What was the first active work you did—I don't care about what Shackelford advised you?

A. You asked me what was done.

Q. I don't want any conversation—what work did

(Testimony of R. A. Kinzie.)

you do on the ground?

A. Before we located any ground or anything I had to know the proper way in which to do it; that was the first step taken.

Q. What do you mean by the proper way?

A. The proper way to locate for a tramway or flume—it took some time to find that out.

Q. When did you then do anything on the ground with regard to carrying out this scheme that was decided upon to open it up through your Gold Creek tunnel—when was the first work done on it?

A. I don't remember if the original surveys of the flume line and tram line were run that fall or not, but they were run the early part of the next year.

Q. Who did that surveying?

A. Mr. Lindsay ran the preliminary line.

Q. Where did he run the preliminary line from?

A. From the canyon of Gold Creek around to just above our Utah Claim on the shore of Gastineau Channel.

Q. When was that done, do you know?

A. That was done in the early part of July, 1910.

Q. Early part of July, 1910?      A. Yes.

Q. Lindsay is the man that ran the line?

A. Lindsay, yes.

Q. Now, when you say Gold Creek canyon, where is that with reference to any object on this map?  
[222—72]

A. For instance, the mouth of the Gold Creek tunnel is at the injunction of Snow Slide Gulch and the canyon of Gold Creek.



(Testimony of R. A. Kinzie.)

Q. Where did you run that line—preliminary line, on this map?

A. Approximately along the same course that is now followed by the flume.

Q. You located some claims about that time, did you not, over which your tunnel was afterwards constructed, from your compressor on up to your dam as it is at the present time constructed—did you locate any property in there then?

A. Yes, there was some property located in there then.

Q. Who located any property in there in July?

A. Above the Colorado Claim?

Q. Anywhere along the course of your flume as it was afterwards constructed, between your compressor in Snow Slide gulch and your dam as you afterwards constructed it?

A. A claim called the Datson-Oregon, I think, was located in July, 1910, as soon as the snow got out of the way.

Q. That was located over the Old Oregon Claim that your company had formerly owned, wasn't it.

A. No, it is not exactly the same.

Q. Well, it was substantially the same, isn't it, Mr. Kinzie?

A. The ground included within the Datson-Oregon is almost the same as the ground included in the Oregon in 1899.

Q. Located by Corbus?

A. Located by Corbus.

Q. And Corbus located that in 1899?

(Testimony of R. A. Kinzie.)

A. I think it was in 1899.

Q. He located it for the company?

A. For the Alaska-Juneau Company.

Q. And Datson located his for the company in 1910?     A. Yes.

Q. Do you remember what day in July that was?

A. No, I don't—I don't recollect the day; it was in July, [223—73] I am quite sure, 1910.

Q. That is one of the locations you know was afterwards declared invalid, wasn't it?

A. I think it was not; that is my impression, anyway; I don't think it is a part of that claim.

Q. You know that is the same claim Judge Cushman made a ruling on and said the location was invalid, that it was located for convenience, and so forth?

A. I remember that part with reference to the Parish Claim but I don't in regard to the Oregon.

Q. Your memory is very good about the Parish, but not so good about the Oregon?

A. I think it is equally as good—and a little better.

Q. You know it is equally true that he did not invalidate the Lotto Lode Claim, don't you?

A. Yes.

Q. Now, then, you have stated two matters that you did in regard to furthering this scheme of opening up the property through your Gold Creek tunnel—or probably three things,—the location of these two mining claims, and the running of the temporary survey lines; now, what was the next thing you did in regard to carrying out this scheme of

(Testimony of R. A. Kinzie.)

opening up the property through your Gold Creek tunnel?

A. The location of the waters of Gold Creek at the point of use below the new Ebner mill.

Q. That is the location that is referred to here as the Mulligan location notice?

A. Yes, sir; the Mulligan location notice.

Q. That was on August 1st, you claim.

A. That was on August 1st, 1910.

Q. Now, in contemplation of opening up this property your Gold Creek tunnel, how many claims altogether, did you locate, Mr. Kinzie—altogether?  
[224—74]

A. You mean on the enlarged scheme of opening up the property?

Q. In contemplation of opening up the property by means of running the Gold Creek tunnel, and in the manner in which you are working on it now, how many claims did you locate in contemplation of that scheme of opening it up, altogether?

A. I don't think I quite understand you, Judge—you mean during the year, 1910?

Q. Yes, sir; I mean after you had decided, agreed to Mr. Bradley's instructions, to which you testified, in 1910—in October—what other claims did you locate besides those which you have already testified to, which was in contemplation of opening it up under this Gold Creek tunnel scheme?

A. There were various claims located in the vicinity; the Oregon, Canyon and those claims were located in the vicinity of the dam; then there was a line of claims in the Jualpa Basin.

(Testimony of R. A. Kinzie.)

Q. A line of claims in the Jualpa Basin—will you indicate that they are?

A. They would be running approximately along the line of the flume marked by the words “Alaska-Juneau Flume”; we also located the claims across Chicken Ridge.

Q. Chicken Ridge is indefinite—will you show on here where that is?

A. It is a point shown on the extreme left-hand portion of the map, which has those narrow portions going trough—

Q. Where your flume line goes through—you mean the narrow portion that is an extension of the ground where the words “Alaska-Juneau Flume,” extending on out to the westward?      A. Yes.

Q. Any others?

A. Yes; there were claims located along the hillside above [225—75] Gastineau Channel, reaching from Chicken Ridge to a point rather above the Utah Claim, which is a patented claim located on the shore of Gastineau Channel.

Q. Now, that is along what rectangular figure or line on this map—were those located?

A. That would be along the upper portion of the area on the lower left-hand corner of the map and above the words “Alaska-Juneau Flume” and reaching over to a point above the words “Milling Plant” in the title “Location of the 12,000 Ton Milling Plant.”

Q. Any others?

A. It was about that time, if I remember correctly,



(Testimony of R. A. Kinzie.)

that the negotiations were opened with Mr. Reck, Mr. Shattuck, and so forth for the purchase of the Abe Lincoln, General Grant, and other claims owned by them along the shore of Gastineau Channel—either then or a little later.

Q. Those were two mining claims also that were held invalid under some proceeding in the Land Office?

A. They were afterwards, I think, held invalid.

Q. Any others? A. During the year 1910?

Q. Yes, or since then.

A. Oh, there have been a number of claims since then.

Q. That is what I am trying to get, as near as you can, all you have located since 1909, when you started to open up this property as you have testified to?

A. We have since then acquired by purchase and location all of the property shown along the north shore of Gastineau Channel, with the exception of that portion covered by the Utah and the Summit Claims; we have also acquired the right of way, as indicated by the tunnel and flume line in the lower left-hand corner; also purchased a portion of the ground included from the Pacific Coast Company; we have [226—76] located in Silver Bow Basin a number of claims, extending the boundaries of our properties, and also have purchased a number of others, patented and unpatented; we have located properties just west of the Ebner mill, and also have purchased another piece of property just southeast of the Jualpa Basin, and located the rectangular

(Testimony of R. A. Kinzie.)

piece for the purpose of driving the sea level tunnel.

Q. Since that time you have had surveyors working and getting up data for the purpose of getting up this exhibit, also?

A. Hardly for that purpose, Judge.

Q. And you have had surveys made approximately covering about all the ground from Gastineau Channel clear out to the northward, and covering over the Ebner property, the Alaska-Gastineau, and other properties up there, in order to ascertain if there were any fractions that could be located, haven't you?

A. We have had surveys run around all of our properties and in the vicinity of all our properties.

Q. Have you had it run around any one of these properties?

A. I think some of our surveys have both gone onto and over other people's property, yes, which we have a perfect right to do.

Q. And a large portion of this property out to the westward is in conflict with some other property?

A. No, not a large portion of it.

Q. Some of it?

A. Yes, some portion of that property—the upper corner there—would be in conflict, I would say.

Q. Is the property you say this is in conflict with patented or unpatented?

A. I think a portion of it is patented and a portion of it is unpatented.

Q. Now, then are you sure, Mr. Kinzie, that the survey made [227—77] by Mr. Lindsay of this

(Testimony of R. A. Kinzie.)

proposed flume line extending from the Gold Creek canyon down to near Gastineau Channel is the first work that you did with reference to opening up this property under this Gold Creek tunnel scheme?

A. Oh, no.

Q. That is not the first that was done?

A. The tunnel line had been run and brushed out in the early days by Mr. Tappan; that was done in the days of 1902 to 1904.

Q. What I mean is this, Mr. Kinzie—the first thing that you did with regard to opening up this property under the Bradley scheme determined upon in 1909—what was the first thing you did?

A. The first thing I did was to find the proper way in which to do it; that was by consulting our attorney.

Q. I mean the first active work—I want to know whether *it the* location of claims or the surveying?

A. There was a great deal of office work necessary—

Q. I want to know what was the first thing that you remember after Bradley had determined to open up this property by means of the Gold Creek tunnel, and along the lines that you are now working that you have testified to, what was done?

A. As near as I can remember it, it was that work of location, and running the preliminary line along the proposed route of flume and tramway.

Q. Was it the location or running your lines, the first work?     A. Both.

Q. At the same time?

(Testimony of R. A. Kinzie.)

A. If I remember correctly they were done at the same time.

Q. What time?

A. July, 1910 or '11, somewhere in there. [228—78]

Q. You didn't locate any claims on that day, did you?

A. What date was the Bear No. 1 located on—I think it was July 11th, I am not positive as to that.

Q. From your memory you cannot tell just exactly the date when the first work was done on the ground after this Bradley scheme of opening up the property had been determined on?

A. To the best of my recollection, it was about July 11.

Q. That was what?

A. That was running of the preliminary lines from Gold Creek Canyon to Gastineau Channel and the necessary location of the proper ground to cover our rights of way.

Q. Now, then, how long prior to August 1st had Lock Mulligan been working for you?

A. I think he had been working for some time for us—I don't know the exact date he commenced.

Q. Was he ever on Gold Creek, to your knowledge, prior to the time you say you sent him up there to post the notice.

A. I don't know, I am sure.

Q. You never had him do any work up there?

A. No, I never had him do anything up there.

Q. What was he working at prior to that?



(Testimony of R. A. Kinzie.)

A. I think he had been working at the store.

Q. He went up there alone to post this notice, did he? A. My impression is that he did.

Q. How long after that was it that you found the notice?

(Not answered on account of objection.)

Q. Now, did you state in your direct examination that you afterward saw a notice posted up there by Mulligan, which was approximately where you had directed him to post it? A. I think I did, yes.

Q. Now, then, you testified in what is known as the Basin case here, I believe, Mr. Kinzie,—it was between the Ebner Gold Mining Company and the Alaska-Juneau Gold Mining Company, [229—79], which is known as No. 2155 in the Circuit Court of Appeals—you testified upon the trial of that case in this court, did you not? A. I did, yes.

Q. I will ask you in connection with this matter as to whether or not you found this notice posted approximately where you directed it to be posted, if you did not testify upon that trial as follows:

“Q. Now, Mr. Kinzie, I will ask you what you did about July or August of 1910, looking towards the appropriation and diversion of the waters of Gold Creek, what was the first steps you took in accordance with the plan outlined by you? A. Well, the first visible step on the ground was the location of the notice. Q. What, if anything, did you do before that? A. We had been on the ground—that is, I had been on the ground, and as soon as Mr. Bradley arrived, I went over the plan with him, and we de-

(Testimony of R. A. Kinzie.)

terminated the exact point where we wished to take out the water." You determined that before you sent Lock Mulligan up there, did you not?

A. Yes, sir.

Q. Another question: "Q. Who is Mr. Bradley?

A. The President and Consulting Engineer of the Alaska-Juneau Company. Q. What did you and Mr. Bradley do? A. We then determined the point at which the diversion was to be made and the location was to be made, and Mr. Mulligan was sent up to make the location." Then, isn't it a fact that before you sent Mulligan up there that you had determined the exact place on Gold Creek where you desired to locate the water?

A. The approximate point, yes.

Q. Well, you stated in your testimony on that trial that you had decided upon the exact point, did you not?

A. Well, it might be so interpreted, yes; but you cannot send [230—80] a man to an exact point on the creek—particularly a man who is not a surveyor.

Q. Approximately how far from the point where you and Bradley had determined you were going to divert the water, did you see a notice stuck up?

A. That would be pretty hard to say—it would be within 50 to 100 feet of the point.

Q. Did you tell him to post it so many feet below the compressor house of the Ebner Company?

A. Yes, I did.

Q. And he didn't post it within 50 or 100 feet of

(Testimony of R. A. Kinzie.)

the place you told him to?

A. I think he went below the point, as it was afterwards surveyed.

Q. Below what point?

A. The point he was told to go to; he was told to measure off a number of feet, starting at the new Ebner mill and going down Gold Creek; and I took the map and measured off the distance from the new Ebner mill to the lower side line of the Lotta Claim—we measured that distance and told him to go up and measure down the creek the required distance, and be sure he went far enough to keep over the end line of the Lotta.

Q. He didn't get over it, did he?

A. To the best of our knowledge, he did.

Q. But you know he didn't get over it, as the decision of Judge Cushman proved, don't you?

A. Judge Cushman has so decided the question, yes.

Q. Wouldn't that 100 feet you indicated have carried you below the present established line of the Lotta Claim, if he had followed it out?

A. No; above the Lotta.

Q. This new Ebner mill you designate in your answer isn't the [231—81] mill that Ebner had been running, but is the one they had the air-compressor in and is down in the gulch?

A. Yes, it is a building built for the 50-stamp mill.

Q. I know, but it has never been used as a stamp mill, has it—had it ever been used prior to that time as a stamp mill?      A. Not to my knowledge.

(Testimony of R. A. Kinzie.)

Q. It is the building down below the 15-stamp mill, in which Ebner had an air-compressor, isn't it?

A. I don't know whether Ebner had a compressor or not; I know the building was built for a 50-stamp mill.

Q. Did Ebner ever use it, to your knowledge at all?

A. Yes, it was used at the time Mr. Thane was up there at the mill, and there was a compressor in it at that time.

Q. That was under the Ebner regime?

A. I don't know if he was operating it or a Mr. Young or Mr. Barron.

Q. When was that? A. 1903.

Q. Then it was used prior to August 1st, 1910, wasn't it?

A. They had housed a compressor in one corner of the building—that is, a water driven compressor.

Q. Do you want to be understood as testifying that they hadn't run the air-compressor to operate the Ebner property—the air-compressor in this building? A. I don't know whether they ran it or not.

Q. That is the building you have reference to?

A. That is the building, yes.

Q. Now, then, how long had Harri been working for you prior to August 1st, 1910—O. M. Harri?

A. O. M. Harri?

Q. Yes.

A. He had been working for a number of years for us.

Q. Now, just prior to August 1st, when you say you sent him [232—82] up there he had been



(Testimony of R. A. Kinzie.)

working for you, had he?

A. Yes, I think he was then working for us.

Q. Are you positive of that?

A. Yes, I am quite positive of that.

Q. That he was working for you right up to August 1st, at the time you sent him up on this property?

A. He was either working right up to that time, or very shortly before it; he had been working on the island as a watchman.

Q. Isn't it a fact he had not been working for you for a long time prior to August 1st, and you sent for him and employed him for the purpose of going up there?

A. I think Mr. Harri would be the best witness on that point; my impression is that he was working for us at that time.

Q. Make it as positive as you can—now, do you know or do you not know as to whether he had been working for you prior and up to August 1st, when you directed him to go up to this property?

A. I think he was, yes.

Q. That is as strong as you will put it?

A. That is as strong as I will put it.

Q. You won't say positively?

A. I won't say positively.

Q. At that time had Harri ever been up on this creek before?      A. Not to my knowledge.

Q. Where had he been working for you prior to that time?      A. In a number of places.

Q. On the other side of Gastineau Channel?

(Testimony of R. A. Kinzie.)

A. Both sides.

Q. On the property of the Alaska-Juneau Company?

A. I think not on the Alaska-Juneau property.

Q. Well, where had he worked for you on this side of the channel? [233—83] A. Sheep Creek.

Q. But you know that he had never been up on Gold Creek before that time, don't you?

A. No, I don't.

Q. You know he had never worked for you up there?

A. I am quite sure he had never worked for us up in Gold Creek canyon.

Q. I will ask you if it isn't a fact, Mr. Kinzie, when you got Harri into your place to make this arrangement with him to send him up there, that you sent him up there expressly for the purpose of ascertaining whether or not there had been any assessment work done on the Parish Claim, is that the errand that you first sent him up there on?

A. No, it is not.

Q. Isn't it a fact that you sent him up on that mission, and he came back and went up on the 1st day of August, and looked over the Parish No. 2 Claim and discovered a tunnel, came back and told you he discovered that, and found that the assessment work had been done on the Parish No. 2, and then didn't return to this property until the 3d day of August? A. You are mistaken, Judge.

Q. Isn't it a fact, Mr. Kinzie, that he did go up there on the 1st day of August, 1910? A. He did.

(Testimony of R. A. Kinzie.)

Q. That is true?      A. Quite true.

Q. Isn't it a fact that he came back on the 1st and went over and reported to you and didn't go back up there until the 3d of August?

A. That is not a fact.

Q. Did you hear Harri's testimony upon the trial of the case in this court, known as the Basin case? [234—84]

A. Yes, sir; I think I have heard all of his testimony.

Q. Now, if Harri testified at that time that he went up there on the 1st and looked around and found this tunnel on the Parish No. 2 Claim, and came back and went up on the 3d, what do you say now about that?      A. I know he didn't testify so.

Q. Now, then, I will ask you if you remember whether Mr. Harri testified on that trial as follows—I am referring to page 1006 of the third volume of the printed record in that case— “Q. Just state what you did when you went up there—what did you find there first? A. I went up on August 1st, and looked the claim all over as much as I could that day to see if there had been any assessment work done on it and I didn't find any; then I came down to the present location of the cabin, and cleaned out some brush there in case I sent someone up there to start the work, so they would know where to start the cabin, and started a short piece of trail up the creek. That was on August 1st. August 3d I went back to the present location of the cabin and up the creek, cut some steps up the bank.” Now, when did he

(Testimony of R. A. Kinzie.)

come back from there—did he come back and report to you?

A. The first part of the testimony I remember distinctly; jumping from August 1st to August 3d I don't remember at all, and I don't think it is a fact.

Q. You don't think he testified that way?

A. The best of my recollection is he didn't, but he went back the afternoon of the 2d.

Q. That is your memory, and you think your memory is better than the printed record on that?

A. I think my memory on that is very good, yes.

Q. What was he hunting for assessment work for—did you instruct him to hunt for assessment work on Parish No. 2? [235—85]. A. I did.

Q. Then one of his missions was to hunt for assessment work on the Parish No. 2?

A. Yes, sir; it was.

Q. When did he come and tell you about it—was it on the 2d or 3d of August?

A. I think the first time I saw Harri after he was sent over here was late on the afternoon of the 3d.

Q. Where did you see him?

A. Just above the cabin, just around the bend, above the bunk-house.

Q. You were up there on the 3d? A. I was.

Q. Mr. Kinzie, didn't you testify on the application for a preliminary injunction in this case when I cross-examined you whether it was the 3d or the 6th, that you didn't remember whether it was the 3d or the 6th?

A. I said it was either the 3d or the 6th; I think



(Testimony of R. A. Kinzie.)

it was the 6th; I have since gone into the subject very carefully, and traced out day by day, and now positively testify it was on the 3d.

Q. You testified substantially on the trial of the Basin case it was either on the 3d or the 6th, didn't you? A. I did.

Q. And you testified on the preliminary hearing that as near as you could confine it, it was on the 6th, did you not?

A. No, I said 3d or 6th, probably the 6th.

Q. You admit you used the word probably, do you?

A. Something to that effect; I don't know whether I did or not.

Q. I will ask you if you remember these questions propounded to you upon the application for the preliminary injunction in this case?

A. Was that the last one? [236—86]

Q. Yes, the last one, "and he went up there; at least you sent him up there—now, what time after that did you go up there, Mr. Kinzie? A. Well, it must have been two or three days later. Q. Now, you testified on that Basin case that you went up there on the 3d or 6th, and that you didn't remember which; didn't you? A. I very likely did. Q. Now, you say that your memory is that you went up there absolutely on the 3d? A. I will change it from the 3d to the 6th, but my recollection is the 6th—I don't remember exactly the date; I will get that date exactly—I should have done it before"—That was your testimony, wasn't it?

A. No, I don't think it was; I am quite sure I was

(Testimony of R. A. Kinzie.)

up there on the 6th, yes.

Q. Well, you don't want to be understood, then, that you answered the questions I read to you from the transcript in the manner in which I read them to you?

A. No, I don't think I answered those questions exactly the way they are reported there.

Q. You have always considered those dates material, haven't you, Mr. Kinzie?     A. Very material.

Q. Now, on those two hearings—were you not positive on those two hearings that you didn't know whether it was the 3d or the 6th?

A. I think that one or two questions have been left out in there, because I was there both on the 3d and on the 6th, and I have since been able to check up day by day from the second, third, fourth, fifth, sixth and as far as the eighth.

Q. But on the other two occasions that you testified, you never before testified you were up there both on the 3d and the 6th?     A. Yes, sir. [237—87]

Q. When did you testify to that?

A. In both hearings.

Q. Then you want it understood that this testimony is not your testimony?

A. Part of it is, yes.

Q. Not all of it—has part of it been left out in the record made by Hamburger, in the Basin case, that went to the Circuit Court of Appeals?

A. I don't know.

Q. You have read the printed record?

(Testimony of R. A. Kinzie.)

A. Yes, I have read that.

Q. You don't think you answered it was either the 3d or the 6th when you went up there, in that record, do you? A. I very likely answered it that way.

Q. Now, you say you went up both on the 3d and the 6th? A. Yes.

Q. You want that to stick, do you?

A. I want that to stick; yes, sir.

Q. Now, I will ask you if you didn't on the trial of the Basin case, which is the case that went to the Circuit Court of Appeals, cause No. 2155 of that court, if you remember this part of Harri's testimony about his coming down from this property on the 1st (I am reading from page 1007, which follows the answer I read to you from page 1006). "Q. At what point? A. At about where the dam is now, and I got through that day and started to come down the flume line to come to Juneau, and I saw a hole in the bank on the south side of the creek that looked like a tunnel and I went over and examined that. While I was examining the claim on the 1st, this being down right under the cliff I didn't see it, but on the 3d I saw this hole and went over and went into it." Do you remember his testifying that way about his coming down to Juneau? [238—88]

A. Coming down to Juneau?

Q. Yes.

A. That doesn't say anything about his coming down to Juneau.

Q. Now, then you testify now that you are positive you were up there on the 3d—where did you see

(Testimony of R. A. Kinzie.)

Harri up there on the 3d?

A. Just around the point, from the little flat where the bunk-house was afterwards built—between the dump in the Borean pit and the point just up stream from the present location of the bunk-house.

Q. Had you seen Harri and had any conversation with him at all between the 1st of August when you sent him up there and the time you saw him when you went up there on the 3d? A. No, I think not.

Q. Do you personally know where Harri had been on the 1st, 2d, and 3d?

A. Did I follow him up all the time to find out?

Q. Yes. A. No.

Q. Now, when you got up there on the 3d, you found him in about the locality that this bunk-house is built, that the photograph, I think you used shows—what claim is that bunk-house on?

A. It is on the Oregon claim.

Q. On the Datson or the Corbus? A. Both.

Q. And if there isn't any Oregon Claim, what claim is it on? A. The El Oro Placer.

Q. Who owns that placer?

A. The Alaska-Juneau Company.

Q. When did you locate it?

A. That was located this spring.

Q. Don't you know that placer is on what is known as the Cape Horn No. 1? [239—89]

A. I don't know whether it is or not; I know there is such a claim up there.

Q. Did you ever run out the boundary lines of that claim? A. No.



(Testimony of R. A. Kinzie.)

Q. If there is such a claim as the Cape Horn No. 1, you say you don't know where the boundary lines of the Cape Horn No. 1 are?     A. No.

Q. What was he doing up there that day?

A. Going down the creek in the direction of the upper part of the creek.

Q. Going down towards the cabin?

A. No; he was above the cabin going down in the direction of the Borean dump.

Q. And on these three days there had been nobody up there where Harri had been working?

A. I am not sure about that; I don't want to testify that there was—my impression is—

Q. I don't want your impression—do you know whether or not there was anybody there with Harri?

A. I am not positive.

Q. Don't you know that there was not anybody up there?     A. No, I do not; I—

Q. Are you positive there was not anybody up there?

A. No; I am not—if I was I would say so.

Q. Harri would know whether there was or not, wouldn't he?     A. Harri would know.

Q. You didn't send anybody else up there with him?     A. Yes, I did.

Q. Who?

A. I sent Summers up to show Harri the place he was to go to work on.

Q. When was that?

A. On August 1st, 1910. [240—90]

Q. Haven't you testified that he went up there

(Testimony of R. A. Kinzie.)

alone, Mr. Kinzie? A. No, I didn't.

Q. Who is Summers?

A. Summers is employed by the Alaska Treadwell Gold Mining Company.

Q. Is he in their employ now? A. Yes.

Q. Is he a surveyor? A. He is not.

Q. Had he ever been up on Gold Creek before that time? A. Yes.

Q. How much work had he done over there?

A. I don't know that he did any work over there.

Q. Summers had not done any work up there when Harri was sent up there? A. No.

Q. Now, what work did you find was done there on the 3d—just explain it as minutely as you can, Mr. Kinzie.

A. The work that was done was the brushing out of the trails from the Jualpa dam to a point just below the Gold Creek tunnel.

Q. That trail commences somewhere near the place—that dam is still standing?

A. The Jualpa dam?

Q. Yes, part of it.

A. Yes, the dam is still standing.

Q. Now, then, this trail extended up to the point where he was going to build a bunk-house, didn't it?

A. No, it didn't; the trail extended up the left-hand side of the creek to a point just below where the tunnel has been driven.

Q. How much had he done in those three days?

A. The brush was out of the trail; the basin road used to go up [241—91] on that side, and he

(Testimony of R. A. Kinzie.)

brushed out that road.

Q. The first thing that Harri did then was to get a trail up to where the house was to be built?

A. I don't know what the first thing he did was, I wasn't there.

Q. Did he have any trail built from the Jualpa flume up to where the house was to be built?

A. Yes.

Q. He had that completed?      A. No.

Q. How much work had he done on it—what part of the distance?      A. This trail—

Q. This trail he had cleaned out which led from the Jualpa dam to where the cabin was afterwards constructed?

A. The first part running to a point just below the Gold Creek tunnel.

Q. My question is, that part of this trail you discovered he had made—didn't this trail lead up to where you afterwards put the cabin?      A. Yes.

Q. For what purpose was it built?

A. It was necessary to brush it out to get lumber, tools and so forth up to where the house was to be built.

Q. The first thing they cleaned out was the trail to get the lumber up to the building?

A. I didn't say that; I say that this is one of the first things I found that he did.

Q. What portion had he cleaned out at that time?

A. I suppose 150, 200 or 250 feet, that is the old Basin trail.

(Testimony of R. A. Kinzie.)

Q. In these three days what else had he done, that you saw?

A. He brushed out where the house was built—brushed out for it; cleaned away some rocks and stuff at the lower end of the [242—92] bluff just below where the bunk-house now stands; a trail made along to the end of the Borean pit, and across the pit they placed a plank.

Q. Was that all you saw?

A. That was all I saw, yes.

Q. Now, then, how far away from where you afterward constructed your dam was this work that Harri had done between the 1st and 3d of August, 1910?

A. The first part of the trail started at a point I should say 1500 or 1600 feet away from our dam and led up, as far as I went that day to a point within four or five hundred feet—350 or 400 feet of it.

Q. The trail commenced down near the Jualpa dam? A. Yes, sir.

Q. How far is that from the Alaska-Juneau Dam?

A. 1500 to 1600 feet.

Q. 1500 to 1600 feet?

A. I should say about that, maybe not quite that far.

Q. And then the end of the trail that had been cleaned out would be about how far from where you started?

A. I should say 350 to 400 feet, as far as I went that day.

Q. It wouldn't be any further than that?



(Testimony of R. A. Kinzie.)

A. I think any of the photographs show it very well.

Q. They don't show the distances, Mr. Kinzie?

A. Yes, they do; they show the trail and they show the dam, and they show the cabin—

Q. I know, but the photograph is not made on any scale—I want the actual distance.

Q. You can get the distance as close as I can give it to you—it would be 350 to 400 feet.

Q. Can you stand at the end of the works up the creek and look up the creek and see the place where your dam is constructed? [243—93]

A. Just state that question again.

Q. Can you stand on the end of this work that Harri had done from the 1st to the 3d—I mean the end up the creek and see up the creek to the place where your dam is constructed?

A. In the first place, I didn't say that was the end of the work he did—I said that was the end of the work I saw; in the second place I think you can—I think you can see the falls and the dam from the end where I was.

Q. Are you positive of that?

A. Yes, I am quite positive.

Q. Have you ever done that, Mr. Kinzie?

A. Not from that particular place.

Q. You wouldn't positively say that you can, would you? A. No.

Q. Now, taking the lower side line of the Lotta Claim, where your dam is constructed, how far can you see down the creek from the left-hand bank from

(Testimony of R. A. Kinzie.)

any point along the lower side line of the Lotta?

A. From the what?

Q. The lower side line of the Lotta, where your dam was constructed, along the lower side line, what is the furthest distance you can see up the creek from the left-hand bank?

A. You can see down as far as at least the Borean dump; I think you can see as far down as where the tunnel starts.

Q. You think the contour of the creek and the bank is such that you could do that? A. Yes.

Q. Can you see, from the left-hand side of the creek all along where your flume line is constructed from the last point I have mentioned?

A. There might be a portion of the flume where it goes around a point on the cliff that you cannot see, but the entire distance from the point where it commences—the flume—at the dam [244—94] up to where it enters the Borean pit can be seen.

Q. You are positive of that?

A. Yes, if you care to I will show you the scene from the picture—the photograph.

Q. I want what your memory is, from your actual eyesight. A. Yes.

Q. You are sure of that? A. Yes.

Q. Now, then, Mr. Kinzie, when was it after the 1st of August that you knew that anybody was up there assisting Harri in the building of the cabin?

A. Positively?

Q. Yes, sir. A. That was on the 6th.

Q. 6th of August?

(Testimony of R. A. Kinzie.)

A. Yes, late in the afternoon.

Q. You were up there on the 6th?      A. Yes, sir.

Q. Who was helping him?

A. This man named Burg; there were two Indians; a man named Burg—I have since found out what his name was—Burg; and a one-eyed man, to the best of my impression it was Dempsey, the carpenter.

Q. You were hauling lumber up the creek at that time, and dumping it off at the old Jualpa dam, and then it was carried by the men up over this trail you have spoken about up to the place where the cabin was built?

A. The lumber, I think, was hauled up on the 4th or 5th; I wasn't there; the lumber was ordered on the 2d.

Q. You don't know of your own knowledge it was delivered on the 4th or 5th?

A. Simply by the records on file.

Q. You gathered that from somebody's else's entries, did you? [245—95]

A. Yes; there was lumber on the ground that day; I cannot say whether it was all the lumber or not; it had been packed up the trail and dumped at Snow Slide Gulch.

Q. How long had they been hauling lumber up there, Mr. Kinzie?

A. Of my own knowledge, I know nothing more about it than the records show.

Q. You don't know of your own knowledge how long they were hauling lumber up there to build the cabin?

(Testimony of R. A. Kinzie.)

A. No, I didn't see them hauling the lumber.

Q. After you built the cabin you built a blacksmith-shop, didn't you?     A. Yes.

Q. Covered with a tent?

A. At first it was a lean-to fly.

Q. Was that lumber hauled up at the same time that lumber was taken up for the cabin?

A. No, there was very little lumber hauled up there at the beginning.

Q. You don't know, of your own personal knowledge, when that house and blacksmith-shop were completed, do you?

A. I know approximately when they were completed; I was up there every two or three days after that.

Q. What do you say approximately?

A. I should say along the 10th or 11th, somewhere in there.

Q. Would it be as late as the 13th of August?

A. No, I don't think it was that late.

Q. Well, you would be in a position to know that, wouldn't you?

A. The record in the case is a great deal more accurate than my memory.

Q. You mean entries made by somebody else?

A. I mean time books and entries made by the men who were working on the job. [246—96]

Q. You haven't heard their testimony?

A. I know what they say about it.

Q. They haven't testified in court—none of them, but Harri?     A. No, I don't think they have.



(Testimony of R. A. Kinzie.)

Q. Now, then, up to the time that this house was completed there wasn't anybody up there assisting Harri in his work, was there?     A. Yes.

Q. Assisting Harri in doing what?

A. They were working around the house, packing lumber and helping on the construction of the trails, and so forth.

Q. Who helped with the construction of those trails besides Harri up to the 12th or 13th, when this cabin was built?

A. You will have to segregate your question a little bit, Judge; if you want to know if I actually saw that, I will have to answer it that I don't know.

Q. Well, I want to know, Mr. Kinzie, whether there was anybody assisting Harri on this trail work until after this house was completed?

A. You want to know—

Q. Yes, of your own personal knowledge.

A. No, sir; I wasn't there; I know what the record shows, and what the record shows is all I know about it.

Q. I am asking, Mr. Kinzie, of your own knowledge.

A. No, sir; I didn't see them cutting any trails.

Q. Isn't it a fact that nobody ever assisted Harri in building trails after that house was built except the trail that led up to the house?

A. I believe that is Harri's testimony—that is all I know about it.

Q. If Harri testified that way you have no reason to doubt it?

(Testimony of R. A. Kinzie.)

A. No reason to doubt it, if he testified to it.  
[247—97]

Q. Now, then, Mr. Kinzie, Mr. Lindsay was a surveyor in your employ at that time, was he not?

A. He was.

Q. Do you know when Mr. Lindsay first went up there to make any survey of any intended flume line of the Alaska-Juneau Company?

A. Do I know when he first went up?

Q. Yes.      A. No, I don't.

Q. Do you know that Mr. Lindsay didn't go up there to make a survey of any flume line until the 12th day of September, 1910?

A. I know the contrary, that he did.

Q. Did you hear Mr. Lindsay's testimony on the trial of this case for a preliminary injunction?

A. I did.

Q. Don't you know that Mr. Lindsay never made any survey for any flume line until the 12th of September, 1910?

A. I know on the contrary that he did; you are speaking of one piece of flume and I am speaking about another piece of flume.

Q. Isn't it a fact that the first surveying that Mr. Lindsay did up there was to go up there and lay out the upper tunnel which you had intended to put the flume line on and that was on the 12th day of September, 1910?

A. No, it isn't so—your question compelled me to answer that way.

Q. Do you know that of your own personal knowl-

(Testimony of R. A. Kinzie.)

edge? A. No, I know what Mr. Lindsay said.

Q. Do you remember Mr. Lindsay's testimony in this case, that he said he went up there on the 12th day of September and surveyed out the upper tunnel, and that Hendrickson and some men went up there and commenced that work?

A. I remember that testimony, yes, sir; that doesn't mean anything. [248—98]

Q. Now, I will ask you if this is his testimony—you know Mr. Lindsay was in your employ—"You were employed to go up there and instructed to go up there and locate a flume grade? A. I was. Q. When did you do this? A. I believe the first survey was made on September 12th for the flume."

A. What do you mean by there?

(Objected to as not cross-examination.)

Q. Then, as I understand, Mr. Kinzie, you swear positively that there was a survey made up there for a flume line looking towards taking the water out of Gold Creek after the 1st of August, 1910, and that such a survey was made before the 12th day of September, 1910; is that true? A. That is quite true.

Q. Who made it? A. Lindsay.

Q. Where did he make it?

A. Made it from the mouth of Gold Creek tunnel to a point on Gastineau Channel on the Utah Claim.

Q. I am talking about the other tunnel up there—was there ever any survey made by Mr. Lindsay or by anyone else of any flume line leading from Snow Slide gulch or where your air-compressor is to where your dam is constructed, prior to September 12,

(Testimony of R. A. Kinzie.)

1910?     A. There was.

Q. Who made that?

A. I don't know—that is what I am trying to find out; the stakes were in there at the time they had this flume started and that was long before September 12th.

Q. And during all the time this case has been pending you have'n't been able to find out who made the survey up there?

A. No, I haven't been asked for it, and I didn't find it.

Q. You know Lindsay did make a survey up there on the 12th, do you not? [249—99]

A. Judge, if you want me to answer these questions, I will do it, but one minute you want me to answer a question one way and the next minute another.

Q. Did you send Lindsay up there on the 12th to make a survey?

A. I don't remember whether I did or not.

Q. Don't you know, Mr. Kinzie, that on the 12th he did go up there to make a survey, and on the 12th he made a survey so it would take the water out of Gold Creek above Snow Slide gulch at some point and bring it through the tunnel, that is, some 10 to 16 feet higher up the hill than where your tunnel was ultimately constructed, through which you put your flume?

A. I know in our office there is a set of notes supposed to be taken by Lindsay in a survey on or about the 12th of September, but I don't know—I wasn't on the ground and know nothing more about it; I am



(Testimony of R. A. Kinzie.)

sure the testimony will show—

Q. Just answer my questions, Mr. Kinzie.

A. Of my own personal knowledge, I don't know; I wasn't on the ground when the survey was made.

Q. You do know this, Mr. Kinzie, from what you have seen on the ground, that there was an upper tunnel started and driven in some 10 or 15 feet?

A. Yes.

Q. Which, if it had been graded off for a flume, would have taken the water out of Gold Creek at a higher point than it is now taken? A. Yes, sir.

Q. Don't you know also that a line was run pursuant to this upper tunnel and grade line, run clear on up Gold Creek to where you intended to take out the water, at the same time?

A. Not that I know of. [250—100]

Q. Of course, you were not up there when Mr. Lindsay made the survey?

A. In fact I don't believe the survey at that time was for the upper tunnel; I think it was the lower tunnel.

Q. Now, Mr. Kinzie, I will refresh your memory, if I can—don't you know that Mr. Lindsay testified in your presence that on the 12th day of September he made this survey for the flume line and grade for the upper tunnel, and then about a week after that he made a survey which would carry your flume line along the present grade?

A. I don't remember that.

Q. You don't remember that? A. No, I don't.

(Testimony of R. A. Kinzie.)

Q. You do know that upper tunnel was started, don't you?

A. I know I started the upper tunnel myself.

Q. Who did you have up there at work on it, Mr. Kinzie?     A. Fins.

Q. Do you remember their names?

A. Yes; Hendrickson was one, Henry Hendrickson, and another one by the name of—I cannot think of his name.

Q. What date was that, Mr. Kinzie?

A. That was, I think, in the latter part of August; I don't remember the exact date.

Q. I will ask you, to refresh your memory, if you didn't testify before in the Basin case that that was about the 5th day of September that Hendrickson went to work?

A. That was a different thing; on the 10th day of September a contract was let to him for the work.

Q. They would not have been put to work on the upper tunnel before the survey was made, would they?     A. No. [251—101]

Q. Don't you know that Lindsay surveyed the flume line for that upper tunnel?     A. No, I don't.

Q. Now, I will refresh your memory on that—didn't Mr. Lindsay testify upon the preliminary hearing that he did make the survey for that upper flume line, and they worked on that upper tunnel about a week, and then he went and made the other survey, don't you remember that?     A. No, I don't.

Q. Were you up on the ground with Hendrickson and his people any more than the one time?

(Testimony of R. A. Kinzie.)

A. I was up there a number of times.

Q. When were you up there first?

A. The latter part of August.

Q. Are you sure of that?      A. Yes.

Q. Can you give the date?      A. No.

Q. And you say Hendrickson went to work on the tunnel up there in the latter part of August?

A. They were up there on the ground every day from at least the 15th and did some work; in the latter part of August they then started work, and on the 10th day of September a contract was signed between Hendrickson and the Alaska-Juneau Gold Mining Company.

Q. Hendrickson had a contract to run the tunnel?

A. After the 10th of September, yes.

Q. Had he done any work on the tunnel before the 10th of September?      A. Yes.

Q. But you cannot fix the date?

A. The exact date when he first went to work there?

Q. Yes. [252—102]

A. No, I cannot; it was on a Sunday, that is as close as I can come to it, when he first went up, because I went up with him.

Q. Now, I will ask you, Mr. Kinzie, if you didn't testify as follows in the court upon the trial known as the Basin case, being 2155 of the Circuit Court of Appeals, the Ebner Gold Mining Company vs. The Alaska-Juneau Gold Mining Company, and the part I read to you is from the printed record of testimony in that case, found in Volume 3, page 921—"Q. I

(Testimony of R. A. Kinzie.)

understand you had Harri up there from sometime about the 1st of August up to some other specific date, before you put anybody there to assist him. Now, leaving out the question of those men who assisted him in building the house or built the house or assisted Harri in getting the lumber to where the house was built—leaving them out of the question, I wish you would fix the date specifically when it was you sent another men up there to help Harri? A. I went on the ground with Hendrickson on September 10th. Q. Hendrickson was the man who took the contract to build the tunnel you expected to put through there at Snow Slide gulch to put your flume through? A. Yes, the contract was afterwards signed up. Q. When you went up there on the 10th—that was the first work you had done outside of what Harri done? A. Yes, sir—that is, on the flume”—didn't you testify that way on that other trial, Mr. Kinzie?

A. I very likely did, and it is more or less true—the contract was signed on September 10th.

Q. Now, I will ask you if you don't also testify upon that trial—in this same volume, at page 908 as follows: “Q. After this cabin that Harri occupied down near Snow Slide gulch was built—not considering the men who assisted in building that cabin but what other men besides Harri did [253—103] you have working up there along about the 1st of August, if any? A. There were no other men. Q. When did you put on any other men up there to assist Harri? A. I think it was September 10th. Q.



(Testimony of R. A. Kinzie.)

Do you know how many men you put on there? A. It was either two or three men—it was a contract started at the time. Q. Two or three men on September 10th? A. Yes. Q. Who were they? A. Hendrickson was one—the contract was let to Hendrickson. Q. What was that contract? A. Driving a tunnel.”—Did you testify to that?

A. I very likely did, but—

Q. I don’t wish any explanations, I asked if you testified that way. You say you were up there quite frequently during the progress of this work—I will ask if you know how long Hendrickson and his people worked on that upper tunnel?

A. They worked until sometime in 1913—1912—I think 1912.

Q. You mean the upper tunnel that was intended to carry your flume through? A. Yes.

Q. That is one of the portals or entrances to your big tunnel, is it? A. No.

Q. You continued the driving of that tunnel, did you? A. Yes, sir.

Q. What was the purpose of that, Mr. Kinzie?

A. To carry the water through.

Q. The upper tunnel?

A. Yes, the water tunnel, by which the water is carried through.

Q. You didn’t carry your water through the upper tunnel—you lowered your tunnel, didn’t you?

A. You mean the tunnel that was started right above the present one?

Q. Yes, is it completed? [254—104]

(Testimony of R. A. Kinzie.)

A. No, that is not completed.

Q. Do you know how long they worked on there?

A. Worked on there I should say 10 or 12 days.

Q. Then they came down to work on the lower tunnel that you ultimately put that flume through?

A. Yes.

Q. And it took some time to put that tunnel through, didn't it?      A. It took a couple of years.

Q. And before you got that completed you ran your flume around the contour line of the creek, and didn't put it under cover?

A. No, that was done in the fall of 1910.

Q. How many shifts did you have at work on that tunnel along in August, 1910, Mr. Kinzie, or when you commenced it—when you first commenced the lower tunnel?

A. When they first commenced the tunnel we only worked one shift; after the contractors left we worked two shifts.

Q. Did you commence constructing your grade for your flume line, after you ultimately decided upon what grade you would construct it—did you commence constructing it from both ends—that is, up where your dam was and down at this end where you were running the tunnel?

A. The grade was first built from the tunnel around to the cliff, and that crew was put to work on the rock cliff; we made several attempts during the month of September to go down and start work on the flume, but were prevented from doing so by men above rolling down rocks and dynamiting, and

(Testimony of R. A. Kinzie.)

it wasn't until October 3d that any rock work was done, a trench cut out, and a flume put in on the evening of October 3, 1910.

Q. You evidently had notice that someone thought you were on their ground?

A. Very strenuous notice.

Q. I will ask you, Mr. Kinzie, as to where you unloaded your lumber you used for the two first boxes that you claim you [255—105] put in Gold Creek on the 3d of October, 1910?

A. We had lumber at two places; some lumber was unloaded at Cape Horn, and then we had some lumber down at Jualpa dam; I don't know whether it was packed down from the Jualpa dam or taken down the hill.

Q. Do you remember, Mr. Kinzie, of a fence being constructed across, partly on the Lotta Lode Claim and partly on what was contended as the Parish Lode Claim, on the boundary line? A. Whereabouts?

Q. On the Basin road.

A. You mean the road that branches off from the Basin road and runs to the New Mill?

Q. New Mill—what do you refer to?

A. To the large building in Gold Creek Canyon built by Ebner.

Q. That is the one you contend was built by him?

A. I know it was built by him.

Q. Because he told you so? A. Yes, sir.

Q. It is commonly referred to as the Air-compressor Plant, isn't it? A. No.

Q. No ore was ever milled in it, was there?

(Testimony of R. A. Kinzie.)

A. There can be a mill without any ore being milled in it.

Q. There was no ore milled in it. Now, to go back—I asked you if you remember that a fence—some sort of a fence was constructed alongside of the main Basin road that runs on the left side of the creek, and that fence was constructed at the point that leads from the Basin road down to this building in the gulch—you remember when that fence was placed there, don't you?

A. The road was fenced in, and a gate put on it.  
[256—106]

Q. Do you remember when that was done?

A. No, I don't—I remember the fence was there.

Q. You remember it was there at least as late as the 10th day of October, 1910, don't you?

A. I cannot place any dates.

Q. You know it was there before the 3d day of October—the date of the diversion?

A. I think it was.

Q. And don't you remember you met with resistance about putting your lumber on what is partly the Lotta and partly the Parish?

A. No, not that I remember of.

Q. Do you remember a young man by the name of Radel?     A. Yes, I think I do.

Q. Do you remember a man named Hunsaker who was out there at the time?     A. I do.

Q. Don't you remember a notice that was posted on there claiming that the Lotta and the Parish were private properties and warning people to keep off?



(Testimony of R. A. Kinzie.)

A. No, I think the warning said that was a private road.

Q. A private road?      A. Yes, sir.

Q. It was a private road, wasn't it?

A. It was built by individuals, and was not a public road as far as I know.

Q. Part of that road was on the Lotta patented claim, wasn't it?

A. I think the lower part was within the lower boundaries as they afterwards decided to be the Lotta claim.

Q. It was on the Lotta claim, wasn't it?

A. Yes.

Q. You say while you were present you never met with any resistance about putting your lumber down that road to build this flume? [257—107]

A. I don't remember of any resistance when I was present, or at any other time.

Q. Of course, I am asking about when you were there?      A. No.

Q. You remember seeing a notice, don't you?

A. Yes, I remember seeing a notice.

Q. You did take your lumber down over that road, part of it to build those boxes?

A. No, I think not, because the boxes were built on October 3d, and the lumber was taken down the trail from Cape Horn, but I really—

Q. I will ask you if you know whether or not at any time while you were present any lumber was unloaded at that point and carried down over this road, over the Lotta and Parish claims to where you

(Testimony of R. A. Kinzie.)

were constructing the dam?

A. No, it never was.

Q. While you were present?     A. No.

Q. Do you want to state to the Court that there never was any lumber unloaded at that point and carried down this road to somewhere in the neighborhood where you afterwards constructed the dam?

A. I wouldn't be able to testify to that.

Q. You don't say there wasn't?

A. No, we had logs and everything piled all the way along there from Cape Horn to our dam.

Q. Did you have any along this point I indicated?

A. No, that is quite a distance up the road from where we had our lumber—it is several hundred feet.

Q. You don't want to testify positively, Mr. Kinzie, that there wasn't any lumber or timber unloaded at the point I have indicated and carried down this road?

A. No, I don't know whether there was or not.  
[258—108]

Q. Now, when was the first time prior to the 3d of August, 1910, that you met with any resistance by the Ebner people in doing anything that you were doing up there?

A. That was the latter part of September.

Q. Do you remember the date?     A. No.

Q. Where was the first resistance you met with?

A. Right opposite—right above where the dam was afterwards built.

Q. Right above?     A. Yes, sir.

(Testimony of R. A. Kinzie.)

Q. What resistance did you meet with there?

A. Rolling rocks down the hill, and blasting on the opposite hillside.

Q. And if they were rolling rocks down the hill, they were rolling them down the hill on the Lotta patented claim, weren't they?

A. They started going over the Lotta onto other ground.

Q. They were working though—the men were up on the Lotta claim, were they not?

A. The men who were rolling them over the hill were on the Lotta and also around on the Parish claim.

Q. That was sometime in the latter part of September, probably the 23d or 24th, or along there?

A. I have the date in my record, but of my own knowledge I could not say.

Q. Do you remember, Mr. Kinzie, any particular person you saw up there on that day that was resisting your efforts up there to do the work that you say you were doing?

A. No;—the date that I remember seeing the men was October 3d.

Q. The men who were doing it prior to that time you don't know?

A. Yes, I know who there were.

Q. Were you up there at the time Hunsaker, who was then the [259—109] keeper of the Ebner property, came out and ordered you men off the ground, sometime in the latter part of September—were you present then?     A. No, I was not.

(Testimony of R. A. Kinzie.)

Q. Were you present along about that time when Hunsaker, together with Fred Radel, ordered you off the ground, or your people?

A. On October 3d?

Q. You were not present at any time they ordered you off the ground prior to October 3d?

A. No, not that I remember; they were on the Lotta Claim on October 3d, and they told us to get off; we were going up to see who was doing the blasting.

Q. What time on October 3d?

A. The morning of October 3d.

Q. Who did you see up there?

A. Al Black, Middleton and Hunsaker.

Q. Who were they working for?

A. At the time they were not working at all; they had filled the side of the hill with holes—puncturing the ground to stick dynamite into.

Q. Over on the Lotta Claim?

A. The Lotta Claim.

Q. And that is the day that you came down and swore out warrants against some of the parties?

A. I think it was that day.

Q. Do you remember who you had arrested that day?     A. I remember some of them, yes.

Q. Who were they?

A. There was Al Black, I think Hunsaker, Mackey—I don't remember who they were now.

Q. You had what appeared to be the leaders arrested, didn't you?     [260—110]     A. Yes, sir.

Q. Then they were brought down town in the cus-



(Testimony of R. A. Kinzie.)

tody of the marshal, were they not?

A. Yes, I suppose they were, or they were sent for and came down themselves—I don't know which it was.

Q. And while these people were down here in the custody of the marshal, late on the evening of the 3d, you went up and got what was your first diversion from Gold Creek?

A. I don't think you can put it that way at all; they came down and gave bail, and went out again.

Q. Where was Mackay, Al Black, and these other men at the time you got your diversion?

A. I haven't the least idea.

Q. Were you up there when you got the diversion?

A. I was.

Q. What time in the evening did you get the diversion?     A. I should say about 8 o'clock.

Q. Do you remember what time the marshal went up and brought down Mackay and the others?

A. Three or four o'clock in the afternoon, I should say it was.

Q. You didn't see them any more that day, did you?

A. Not that evening, but there was somebody there; I don't know who it was.

Q. How many men did you have at work up there on the evening of October 3d when you claim you put these two boxes in Gold Creek and got your diversion of water?

A. Oh, I should say there were eight to ten men.

Q. Do you remember the names?

(Testimony of R. A. Kinzie.)

A. I can get the names for you if you want them; we have the names; Hendrickson was in charge of the crew, and Arthur Kruner—I don't remember the names.

Q. Those that you have mentioned, are still in your employ now, are they?

A. Hendrickson is not, no. [261—111]

Q. How many of them are in your employ now?

A. Oh, three or four of them that were there at that time.

Q. You claim that you constructed a dam there, do you? A. No.

Q. Well, what did you do then?

A. We had the material for the box—and had it ready for the first one or two boxes, as we had the brush cut and the boards ready, and during the day time we put in the tow logs across the creek; that evening we put in the brush, longwise, and put a stone on top of the brush; we blasted and cleaned out a channel next to the left-hand bank of the stream—cut it down, so that the water would pass through the first length of the flume full capacity; then we put the flume in, bolted it down, and put in poles to hold the flume down.

Q. How long a piece of flume did you put in?

A. I don't remember the length of that flume—16 to 18 feet.

Q. The water ran in the flume at one end and ran out of the other end into the creek, did it?

A. Yes.

(Testimony of R. A. Kinzie.)

Q. How many logs did you say you put across the stream?     A. Four or five logs.

Q. Are you sure of that?     A. Yes.

Q. And the logging was put down long ways, the brush was placed in front of that, a rock piled in front of the brush to raise the water and throw it over on the left-hand side of the creek?     A. Yes.

Q. While you were doing that, did you see any of the Ebner people around there?

A. There was someone up on the hillside, I didn't see who they [262—112] were.

Q. Did you let that piece of flume remain in there?

A. Yes.

Q. That is a part of your dam as you afterwards constructed it?

A. It was shattered the next night, and we reconstructed it immediately.

Q. What do you mean by the next night?

A. On the night of October 3d someone put men to work up above blasting rocks and boulders down up the dam and flume as we had placed it in the canyon and crushed in the upper part of the flume and broke out the sides; the condition of the flume that morning is shown by the photograph introduced this morning.

Q. You were up there on the next morning, on the 4th, were you?     A. I was.

Q. Now, then, Mr. Kinzie, where was that flume put in at that time with reference to where your dam is now constructed?

A. Exactly the same place—the identical place.

(Testimony of R. A. Kinzie.)

Q. You know that flume you put in there, Mr. Kinzie, was between 50 and 55 feet up the creek, that you put in there that night?

A. I know exactly to the contrary, that the flume as put in to-day is exactly the same place it was put in on October 3d.

Q. The flume to-day runs out and carries the water over the ground—

A. I mean the intake.

Q. You mean the intake is just exactly where it was on October 3d?

A. Yes.

Q. Don't you know that each of your dams, Mr. Kinzie,—that you ultimately constructed, and that you constructed at the time this basin case was brought, that part of your dam was on the Lotta patented claim?

A. I know to the contrary, as the photograph in evidence will show the conditions of it on October 4th, that the dam is [263—113] in the identical place that it was placed on the evening of October 3d, 1910.

Q. How do you account for this, then—you know that Judge Cushman, in his decision in this case, said you should be ejected from the Lotta Claim?

A. There was a portion of the filling on the right-hand side of Gold Creek that projected over the side of the Lotta and we were ordered to remove that and we have done it. The logs had been placed across the creek, and on the right-hand side of the creek—the intake was on the right-hand side—we filled in with rock so that the water would come and strike them and be thrown over on our intake, and the fill-



(Testimony of R. A. Kinzie.)

ing in front of the logs projected over the side line of the Lotta; that is on the extreme right-hand side of the creek.

Q. Don't you know that some of the ends of your logs that constituted your dam had projected over on to the Lotta patented claim?

A. No, I think not.

Q. You wouldn't be sure of that?

A. Yes, I know exactly where the line ran.

Q. If an actual survey of it would show, that it did, what would you think of that?

A. An actual survey of it would not show that it did.

Q. Did you ever survey it?      A. Personally?

Q. Yes.      A. No.

Q. And the other part you say you did remove?

A. Yes, simply the filling in there, and we have built on that right-hand side a more substantial structure, but on the left-hand side we couldn't go any further because we were right on the side of the falls, and it would be impossible to go any further down; the photograph will show that very [264—114] clearly.

Q. How far, Mr. Kinzie, where you saw that notice which you have testified to that it is claimed Mulligan posted—some kind of a notice—how far was that above your dam that you ultimately constructed as it is now?

A. Oh, it was quite a ways above the present dam.

Q. Following the contour of the creek, how far would you say that the cabin that Harri built, or

(Testimony of R. A. Kinzie.)

that was built, by his assistants, is from where your present dam is, as near as you can follow the contour of the creek, and then I will ask you on a straight line.

A. I can measure it on that map, do you want it measured?

Q. Yes, on a straight line from the cabin that Harri built, providing that map is correct, how far is it on a straight line from where your dam is?

A. That would be 800 feet.

Q. Following the contour of the creek it would be more, wouldn't it?

A. Something greater.

Q. Harri's cabin cannot be seen from where your dam is constructed, standing on the dam?

A. I think not; that is my impression, it cannot.

The COURT.—Is the scale on that map?

Judge WINN.—Yes, the scale is 200 feet to the inch.

Q. Now, at the time that you put this dam in, Mr. Kinzie, or attempted to put it in, or the work that you did on the 3d day of October—taking that as the starting point, how far down the creek on the left-hand bank was it before you struck any grade that you had completed on your flume line?

A. About 150 feet, maybe not quite that far; yes, I think it is that far. [265—115]

Q. Didn't you testify before it was 300 feet?

A. From the dam?

Q. Yes, sir; I want to know what you testified to before.

(Testimony of R. A. Kinzie.)

A. One hundred and fifty to two hundred feet, somewhere around there; I don't remember exactly.

Q. Do you remember or do you not remember, Mr. Kinzie, that you testified before that you thought it was 300 feet?

A. I don't remember what I testified to before—it is approximately in there.

Q. Over that *spce*, what, if anything, had been done at the time you claim to have made a diversion of the water?

A. We had started the grade, and the rock on the upper part—

Q. I mean from your dam, where you claim that you put it in on the 3d of October, on the left-hand bank, how far was it before you struck any grade—you have given that; now, over that same piece of grade had you done any work at all?

A. Yes, we had started cutting out a bench on the lower part, and on October 3d we started cutting out the upper part.

Q. I mean prior to October 3d?

A. The work had been started on the lower part, but not on the upper part.

Q. Now, this work that was being done on that grade, how far was that from where you put in your flume on October 3d?

A. I should say from 25 to 30 feet, maybe a little more.

Q. Did some work within twenty feet of your dam, on the 3d of October?

A. We built these and drilled some holes.

(Testimony of R. A. Kinzie.)

Q. Before the work, what did you do?

A. No work at all.

Q. After you left the dam, how far was it before any work had been done?

A. At the lower side they had started cutting out the rock work [266—116] from the direction of the tunnel.

Q. What do you mean, you mean on the lower end of the 300 feet or the 250 feet or the 150 feet of rock cliff that there were men working upstream and men working downstream, and also men working on the grade? A. Yes.

Q. Prior to the 3d day of October?

A. Prior to the 3d day of October.

Q. How far away down the creek from where you were endeavoring to get your diversion or did get your diversion that you claim, leaving out right around the dam, was it before you struck any work that had been done looking forward to the building of your flume line?

A. 150 feet or 200 feet, something like that; here is the photograph here that shows the distance exactly.

Q. Well, you made it a little closer than that in your answer in the other case,—didn't you state this: "Q. How far down was it from your flume, down the present grade of the flume that you had any grade ready to lay your flume on on the morning of the 3d? A. Well, the first spot that was graded, that was entirely finished, I should say would be perhaps 300 feet, maybe a little less."



(Testimony of R. A. Kinzie.)

That is in addition to that that was entirely finished? Did that 300 feet have any work done upon it? A. Yes, sir.

Q. When did you have that done?

A. They were working on it along the latter part of September, I remember.

Q. Could that grade, or where that work you contend was being done, or was done, could that spot be seen from the lower side line of the Lotta Claim?

A. I rather doubt it; from the lower side line of the Lotta? [267—117]

Q. Yes. A. No.

Q. That work could not be seen from the lower side line of the Lotta claim?

A. No, that was entirely off the Lotta claim; the Lotta claim was way up the hill from that.

Q. The Lotta claim crosses the creek, don't it?

A. Yes, sir.

Q. Now, I want to know whether or not any part of the work you said was done down 300 feet or 150 feet from your dam—whether or not that could be seen from any point along the Lotta claim?

A. Yes, I think it could; I think it could be seen from the bank of Gold Creek.

Q. If it could be seen, you think it could be seen from a point near the Basin road?

A. No, on the bank of Gold Creek just above the Alaska-Juneau dam.

Q. From the left bank? A. No, on the right.

Q. I mean by left the left-hand side going down the creek? A. So do I.

(Testimony of R. A. Kinzie.)

Q. What did you send Summers up with Harri for, on the 1st day of August?

A. Show Harri where to go.

Q. To show him where the boundary lines of the Oregon claim were? A. He showed him that.

Q. That was one of your purposes in sending him, wasn't it? A. Yes.

Q. The Oregon claim as it stood then consisted of the Parish No. 2, didn't it? A. Yes. [268—118]

Q. Did it take in all of the Parish No. 2 that was on the left-hand bank of the creek, or just a part of it?

A. No, I think there was a part of it not included in there.

Q. There wasn't any on the right-hand side of the creek included in either one of the Oregon claims?

A. Yes.

Q. Which part on the right-hand side of the creek was included in either one of the Oregon claims?

A. As you go up Gold Creek there would be a point on the right-hand side of the creek at a point—well, between the bunk-house and the Lotta, just at that point, that would be within the boundaries of the Oregon.

Q. Let me understand you, Mr. Kinzie; would that part of the Parish No. 2 claim, as was contended for, on the left-hand bank which had some tunnels in it, would that be on the Oregon claim? A. It would.

Q. This flume that you put in there that you claim you got your diversion through on October 3d, do you say that was the same as your flume that you

(Testimony of R. A. Kinzie.)

afterwards constructed, and the flume that is now constructed? A. It is the same size, yes.

Q. What do mean by the same size, Mr. Kinzie?

A. Same width and same height.

Q. What size is it? A. Three by three.

Q. And that is the same size as your flume that is now constructed? A. Yes.

Q. Of course that identical flume is not part of your flume as you afterwards completed it?

A. You mean that identical lumber? [269—119]

Q. Yes. A. I doubt it very much.

The COURT.—How much water will it carry?

A. That is a very steep grade—between four and five thousand inches; most of the time the water is flowing right over the top of the flume.

Q. That is what the piece you first put in there would carry? A. Yes, sir.

Q. Did you ever compute that grade to find out—

A. No, it is very hard to compute, because the head is such that by looking at that photograph you can see the water is below it, right in front of that it is a very steep grade, and the flume is about 8/10 per cent grade.

Q. What do you mean by 8/10 per cent grade?

A. Eight-tenths of one per cent grade—8/10 of a foot in a hundred feet.

Q. When you put your flume in eventually as it is now put, what slant would that be right where it is put in—that is, about what angle would it strike a perpendicular line erected at that point?

A. I don't think I exactly understand what you

(Testimony of R. A. Kinzie.)

mean; you mean the grade of the flume?

Q. I mean about what angle would the grade of the flume make with a perpendicular line erected where the water comes into the flume—it isn't flat?

A. No, it is a grade; the average grade from the first part of the flume to the intake of the water tunnel is something over  $1/2$  of one per cent.

Q. What is the grade down to your air-compressor?

A. To the air-compressor, that would be about that grade.

Q. It varies, doesn't it?      A. Yes.

Q. And that is one of the reasons why you say it is hard to [270—120] compute?

A. No, you can assume a grade without computing it exactly.

Q. One part of it is lower than the rest?

A. The grade changes.

Q. That is why it is hard to compute?

A. No; in cross sections you can compute it exactly.

Q. Have you computed it exactly in this case?

A. No, sir; I haven't; I intended to but I neglected it.

Q. Now, Mr. Kinzie, do you use all the water that comes through your flume to run your compressor with at Snow Slide gulch?

A. We have used it all—we are using all the water we can get from the flume now.

Q. Does it require all the water you can put through the flume to run your compressor at Snow



(Testimony of R. A. Kinzie.)

Slide gulch?      A. No, sir.

Q. About what part of the water required does it take to run your compressor at Snow Slide gulch?

A. The first compressor required it all, because it was a light head, and we had an eight or ten nozzle which took practically all the water the flume would carry; but on the second compressor I think we had three  $3 \frac{1}{4}$  or  $3 \frac{1}{2}$  nozzles under a head of 90 feet and it didn't require all the water.

Q. There has always been a lot of waste water going through your flume, hasn't there?

A. When the water is high in Gold Creek there is a great deal more than we can take in our flume.

Q. How do you get that water down to the shore line here?      A. Through our flume.

Q. It goes through your flume and you use it at your air compressor, and then it comes through your flume to the [271—121] shore line?

A. Part of the water that is used in the compressor don't come down, it is turned in the creek—in our No. 2 compressor.

Q. Well, then, the water that comes through here is additional water outside of that that you use in your air-compressor?

A. We are not using water except in case of emergency at the air-compressor; we are using the water at the mill site.

Q. When did you quit using the water on your air-compressor?

A. We haven't quit entirely; we do in a case of a breakdown; we put in a new compressor here a

(Testimony of R. A. Kinzie.)

couple of months ago I think it was.

Q. You put in a new compressor up there?

A. Yes.

Q. What did you do that for?

A. Driving the drills in the mine, and for ventilation.

Q. But that water that you used at your air-compressor isn't water that is being used at your mill down here at the beach, is it?

A. No, if we used water in the compressor, that water is turned back into Gold Creek; all the water that the flume will carry is being taken down to the mill site and is used on the mill site.

Q. What have you been using it for there?

A. Milling purposes and sluicing and grading off.

Q. Now, Mr. Kinzie, how much of your additional units of the 40-stamp mill that wasn't constructed at the time the application was made in this case, have you now constructed?

A. Already constructed and running?

Q. The one you were working on at that time, how much of any additional units have you constructed since then?

A. There has been 10 more stamps, regrinding machinery, extension to the building, and rock-house erected. [272—122]

Q. Have you extended the building that was on your mill site here on the beach, since the application for the preliminary injunction in this case?

A. We have; yes, sir.

Q. How much have you added on to it?

(Testimony of R. A. Kinzie.)

A. We have added enough room to cover 20 stamps, and we have now almost finished the first installment in addition to the 40 stamps.

Q. You have made the building larger?

A. Yes, we have.

Q. The building itself larger?      A. Yes, sir.

Q. How many feet have you added on to it?

A. 350 feet to the bottom part, and to the upper wings we have added about 18 or 20 feet.

Q. You have completed your first unit?

A. We have 50 stamps now, and are working on the extension of the mill now.

Q. Now, Mr. Kinzie, have you been using all the water at your mill that has been coming through your flume?      A. We have.

Q. What have you been doing with it—using it for?

A. For milling purposes, sluicing off the hillside, and keeping the tailings from accumulating on the beach, taking it down under our wharf and distributing it to prevent the teredoes from eating up our piles.

Q. Now, there has been a stream of water running down that hillside and it has cut a well-defined channel, and has been running down there for a month or so that way.

A. That water is carried down to sweep out our tailings in the mill, and also for sluicing and hydraulicking the foundation for the power plant, filling in under our carpenter shop, for fire protection, also used to wash the tailings under the [273—123]

(Testimony of R. A. Kinzie.)

wharf, and also to keep the teredoes from eating the piles.

Q. That is some of the purposes you intend using the water for?     A. Yes, sir.

Q. To keep teredoes out of the piles?

A. That is one purpose of it.

Q. How long has that water been running in that channel?

A. That is the end of the present flume; we have used part of that for hydraulicking this summer, washed off several hundred cubic yards of material.

A. I will hand you a photograph and ask if you recognize that to be a photograph of your mill, that you have been testifying to?     A. I do.

Q. The stream of water shown there, how long has that been running in that channel?

A. More or less while there was water in Gold Creek we always allowed a certain amount of water to go ahead and that water is caught up by the flume in the middle of the picture and carried down to the flat that is just below the right-hand edge of the picture.

Q. How much extra ground have you sluiced off with that water since the preliminary hearing in this case?

A. We have sluiced off the entire portion of the ground shown to the west of the mill, or to the left-hand side of the picture; we have sluiced off a portion of the ground in front of the mill for a distance of 18 feet; we have sluiced off a portion from the lower easterly corner of the mill along the line as



(Testimony of R. A. Kinzie.)

indicated by the pipe-line shown in the photograph; we have sluiced off the tail-race through which the water is now running from the pipe-line down through the tail-race; we have also sluiced off and cleaned off a portion of the ground which is indicated in the middle upper part of [274—124] the picture.

Q. Wasn't the most of this ground that is indicated in this photograph, or a large portion of it, sluiced out at the time the application was made?

A. There was a portion of it sluiced out at that time.

Q. How long did you say the water has been running in that particular place?

A. There is always some water through there, that is required to run down and keep the tailings from accumulating on the beach.

Q. Did you say in one of your pictures that there wasn't any water running down there—Plaintiff's Exhibit No. 16—is there any water running down there?

A. There is some water running there, very little.

(Whereupon an adjournment was taken until 10 o'clock to-morrow morning.)

# MORNING SESSION.

June 24, 1914, 10 A. M.

R. A. KINZIE, on the witness-stand.

Cross-examination (Cont'd.)

(By Judge WINN.)

Q. Mr. Kinzie, I think in reply to a question Mr. Hellenthal propounded to you you stated your mill

(Testimony of R. A. Kinzie.)

in the basin was just back of your mill which you constructed on the beach; I will ask you to look at Plaintiff's Exhibit No. 1 and point out as to where your mill up in the basin is.

A. You are mistaken about my answer; I didn't answer any such thing.

Q. I ask you to look at this map and point out on it where your mill is up in the basin?

A. Our mill up in the basin? [275—125]

Q. Yes.

A. It is in the upper center by these large black marks up under the words "Mine" in "Mine Workings," the upper portion of the map.

Q. Now, your mill that you have been testified concerning as being down at the beach, is indicated on this exhibit by what?

A. It would be about the location of the word "Location" in the title "Location of 12,000-ton Milling Plant," on the lower left-hand corner of the chart.

Q. What is the distance approximately between that mill and the one up in the basin, up near where "Mine Workings" is, approximately?

A. 22 or 23,000 feet the way you have to go to get up there.

Q. Well, across on a straight line how much is it, approximately? A. About 10,000 feet.

Q. About 10,000 feet on a straight line. Now, Mr. Kinzie, you told Mr. Hellenthal considerable about some work that had been done in and about the Alaska Juneau property prior to the year of 1910—

(Testimony of R. A. Kinzie.)

we will say prior to July, 1910; that work that you carried on then looking towards the opening up and development of this property was conducted at what particular point, if you will indicate them upon the Plaintiff's Exhibit No. 1?

A. They are all conducted on the southwest, you might call it the southerly side of Silver Bow basin; it consists of short shafts, ground sluicing and work of similar nature.

Q. Was any of this work you spoke of done down on what you claim to be the Oregon claim, down near where you commenced your Gold Creek tunnel, the big tunnel that commences near Snow Slide gulch?  
[276—126]

A. That tunnel is not on the Oregon claim, it is on the Colorado claim.

Q. I say have you done any work down in that vicinity and in the vicinity of what you claim to be the Oregon Lode Claim?

A. The assessment work has been done on the Oregon claim for a number of years.

Q. Now, isn't it a fact, Mr. Kinzie, that there hadn't been any work done in and about the Colorado claim and the Oregon claim between the year of 1905 and up to 1910?

A. No, I think—there might not have been any assessment work done there but there was a great deal of other work done.

Q. Might not have been any assessment work done?

A. I don't remember the exact dates of the assess-

(Testimony of R. A. Kinzie.)

ment work at this time.

Q. You patented the Colorado, Mr. Kinzie, did you not, in 1904?

A. It was 1904 or '05, I have forgotten which.

Q. Now, this Colorado claim, when you undertook to patent it you found that it conflicted with what is called the Parish No. 1, didn't you, Mr. Kinzie?

A. There was a controversy that came up in regard to it; yes.

Q. You have been well acquainted, Mr. Kinzie, have you not, with this Alaska-Juneau property ever since you came to Alaska?      A. I have.

Q. Now, then, you said something yesterday in your direct examination to Mr. Hellenthal about not knowing where the lower side lines of the Lotta claim were at the time that Mulligan made his location notice; how did you and Mr. Bradley figure out as to where to send Mulligan up there to post any notice?

A. We figured from the patent plat.

Q. Of the Lotta patented claim?

A. Lotta claim, yes.

Q. Is that all you used? [277—127]

A. I don't remember what else we used; we had a topographical map there.

Q. Don't you know, Mr. Kinzie, that you used principally some ties that were put on to one of your lower claims, the Idaho or Colorado, and then figured on up the creek leading to the intervening claims, and that is the manner in which you arrived at the point which you sent Mulligan to?

A. No; it is not.



(Testimony of R. A. Kinzie.)

Q. Do you know whether or not Lindsay went up there after you made the survey, he and Wayland, and undertook to find the lower side line of the Lotta claim, and didn't they commence at corner No. 5 of the Idaho claim and measure on up the creek and undertake to find out the lower side line of the Lotta in that manner?

A. They ran a survey up the creek at the time of the first injunction proceedings.

Q. Ran a traverse line, didn't they?

A. That is a survey.

Q. They didn't make a survey of the exterior boundaries of the claim?

A. A traverse line is a survey.

Q. Is it a survey of a mining claim?

A. It could be.

Q. It could be a survey to find out where the different lines are, could it?

A. That is the proper way to locate it if the stakes are in the ground.

Q. Then, you know that these parties, when they went up there, did commence at some corner of the Idaho claim and ran a traverse line up the creek in order to ascertain or find out where the lower side lines of the Lotta claim were, don't you? [278—128]

A. No, I don't know where they started; they ran a survey at the time of the first hearing to find out if they were on the Lotta claim.

Q. You don't know how they made that survey?

A. They made it in the usual way, ran a traverse line.

(Testimony of R. A. Kinzie.)

Q. Where did they commence?

A. I don't know.

Q. If they commenced down on one of those claims—take for granted that they commenced at corner number 5 of the Idaho claim, do you think it is probable then that they ran a traverse line up the creek?

A. Yes.

Q. Now, those intervening claims that they would cross before they reached the Lotta claim, are all junior claims to the Lotta claim, are they not?

A. The Lotta, yes.

Q. The Lotta was one of the oldest claims up there, wasn't it?      A. Yes.

The COURT.—Judge Winn, just a minute; I don't recall any testimony as to where the Mulligan notice was, consequently I can't see the relevancy or the pertinency as cross-examination of any testimony as to where the Lotta was.

Judge WINN.—Very well, I will not ask Mr. Kinzie any further questions directly on that line.

Q. Now, Mr. Kinzie, let's get down more definitely, if we can and find out what was done upon the Oregon Lode Claim between the year of 1905 and up to the year of 1910; now, I understand that there was nothing done in and about the Oregon Lode Claim or the Colorado Lode Claim except some geological examinations that were made by you or some one on behalf of your company; there was no assessment work done at any time on the Oregon claim between the years of 1905 and 1910? [279—129]

(Testimony of R. A. Kinzie.)

A. You mentioned Summers going up there to show Harri?

Q. That isn't in the question.

A. Now, what Oregon claim do you mean?

Q. Is there any difference in the Oregon as located by Datson and located by Corbus?

A. There is; Summers knew nothing about the Oregon located by Corbus.

Q. One of these claims was located in 1899, wasn't it? A. It was.

Q. And one in 1910?

A. Yes, sir; 1910, that is the claim that Mr. Summers knew about, the one located in 1910.

Q. That is the one he was sent up to find out the boundary lines of?

A. That is the one he knew about.

Q. And the one that was located in 1910, and the one that was located in 1899 covers the same ground?

A. Practically the same ground; yes.

Q. Now, what I want to find out, Mr. Kinzie, is what work, if any, between the years of 1905 and 1910 you did down in the neighborhood of the Oregon claim; I don't care which Oregon, and in the vicinity of the Colorado claim—what was done there between those years? A. In 1895?

Q. 1905 to 1910.

A. 1905—now, I am not quite sure whether that was the year the patent was issued to the Colorado or not, but we can assume that it was in that year; the conflict as shown on that map, we had an agreement with the Ebner Company which recognized our

(Testimony of R. A. Kinzie.)

right to drive a tunnel through that ground that is mentioned in the agreement with Ebner, and that was one of the principal objects of going to patent with the Colorado claim at [280—130] that time, that is, instead of going and fighting the thing in court.

Q. Cut that a little short. A. No, I cannot.

Mr. HELLENTHAL.—Let the witness answer the question.

Q. I am asking what work—simply what work was done there, Mr. Kinzie?

A. That was part of the work that was necessary for our tunnel that was to start at Snow Slide Gulch and go through into the Basin.

Q. You say you got a contract between 1904 and '05 out of Ebner?

A. No, we didn't get a contract out of Ebner at all; it was a compromise of the disagreement over the ownership of part of the Colorado Claim, and in that we especially mentioned our plan of driving this tunnel, and the right of way for the tunnel was included in the deed.

Q. Do you call that work on a mining claim?

A. Yes.

Q. What other work did you do besides entering into a contract with Ebner?

A. I am not sure what year the assessment work on the Corbus-Oregon stopped; the year that the Utah went to patent, that was 1905 or '06—I am simply stating from memory, the date of the patent, the tunnel survey was connected and tied down to the



(Testimony of R. A. Kinzie.)

proposed location of the mouth of the Gold Creek tunnel by Alfred Williams; Alfred Williams was then surveying and tied in, I think, the Nevada claim and the Maryland claim on the upper end of the Colorado, but I don't remember if any work was done in the lower tunnel on the Colorado that year or not.

Q. Maybe I can refresh your memory by this Basin case, No. 2155 of the Circuit Court of Appeals, *The Ebner Gold Mining Company vs. the Alaska-Juneau Company*, in Volume 3, page 870 of [281—131] the printed record in that case, I will ask you if this refreshes your memory—it is reading from your testimony in that case: “Q. You knew Mr. Ebner was laying claim at that time, however, to the Parish No. 2 and Parish No. 1?”—That is the time you claim you had your settlement and that is referring to that time—“A. He came to me and told me so, and it made very little difference to us—all we wanted was the right of way for our tunnel through there”—then it says, “Whereupon Court adjourned until to-morrow morning at 10 o'clock”—and then we came back and these questions were asked: “Q. Since the Colorado claim was surveyed for patent in 1904 what work, if any, had been done on the Colorado Claim down say to the year of 1910? A. I think nothing has been done there except the survey lines have been run, connecting that for a tunnel through there. Q. In fact, there has been nothing done up there except what you have just mentioned since these claims went to patent on any of the bunch of claims, the Idaho, Colorado or the Oregon Lode

(Testimony of R. A. Kinzie.)

Claim, since 1905? A. Yes, sir. Q. What did you do on the Oregon Lode Claim? A. A detailed geological study has been made of all that ground.”—Then the Court said: “Is it patented?”—and you say: “Yes, sir. Q. You have not done any work that was underground work or running any tunnels or any work of that kind on any of this property since 1905? A. There has been no tunnels run at all until last year. Q. What did you do on the Oregon claim, if anything, since 1905? A. A detailed geological study was made of that entire country; the maps that were used in the geological study were made; a line of tunnel was brushed out and two surveys, I think, were made connecting the proposed tunnel with a point in the basin. Q. You have described approximately what has been done since 1905 without going into details? A. Yes, sir.”—[282—132] Now, are those facts true? A. They are.

Q. Now, I will hand you a map or plat which has been detached from Volume 5 of the printed record in the case No. 2155 of the Circuit Court of Appeals, being the Ebner Mining Company vs. the Alaska-Juneau Company, and being the case in which an ejectment suit was brought to eject your people from two mining claims; I will ask you to look at this map and plat, which has evidently been offered in evidence once before in this case and is marked Defendant’s Exhibit “B,” received in evidence January 14, 1914, and I will ask you if you recognize that as one of the plaintiff Company’s exhibits that was offered in that case?

(Testimony of R. A. Kinzie.)

The COURT.—Which case, Judge Winn?

Judge WINN.—The one I last mentioned, 2155; it is one of the exhibits that they offered in evidence originally in cause 2155 of the Circuit Court of Appeals, which was the ejectment over two mining claims up there.

The COURT.—In which case was this exhibit offered?

Judge WINN.—I mean No. 2155 of the Circuit Court of Appeals, being the case of the Ebner Gold Mining Company against the Alaska-Juneau Gold Mining Company.

A. I have seen a similar map, but I don't remember if this is the exact copy of the map or not; I couldn't say as to that.

Q. Don't you know, Mr. Kinzie, that that identical map, of which that was a tracing, was one of your principal exhibits in that basin case, that Mr. Stewart testified on so much?

Mr. HELLENTHAL.—Is that one of the Plaintiff's Exhibits at that time—the Ebner Company was the plaintiff in that case.

Judge WINN.—I know, but we offered it in evidence in the preliminary hearing as Plaintiff's Exhibit, but originally it was the Alaska-Juneau Company's exhibit in No. 2155 of the Circuit Court of Appeals. [283—133]

Mr. HELLENTHAL.—It is our number all right, but it is the defendant's exhibit.

Q. What do you say about it, Mr. Kinzie?

A. I think it is, but I don't know positively about

(Testimony of R. A. Kinzie.)

it; I have a reason to believe that it is a copy of the same map.

Q. I will have this marked for identification as our exhibit. I will ask you to look at this map and state whether or not the cabin that Harri built isn't on the Cape Horn No. 1 or the Cape Horn claim?

A. It is above the Cape Horn on the Oregon, both Oregons, as shown by this map.

Q. As shown by that map of yours?

A. I don't say the map is ours, but I rather think it is.

Q. Well, if the Oregon claim does not exist then it would be left on the Cape Horn claim, wouldn't it?

(Not answered, because of objection.)

Q. You have no doubt, Mr. Kinzie, but that this is an absolutely correct survey made by your people and was offered in evidence in that other case, have you?

A. I rather think this is the map.

Q. I will ask you, Mr. Kinzie, to look at this map, which has been marked for identification, and see the cabin of Harri indicated on it—you see it do you?

A. I see a cabin, yes.

Q. That is the Harri cabin, isn't it? A. Yes.

Q. From that point down the creek towards the Jualpa dam, where did you build your trail, can you indicate? A. Yes.

Q. The first trail where did it come from; indicate some point so that we will understand it; that is, I mean the first trail that Harri brushed out that you claim was brushed out when you went up there in August? [284—134]



(Testimony of R. A. Kinzie.)

A. I don't know what the first trail was that Harri brushed out; I know the trail that was on the ground the first time I was up there.

Q. The first time you were up there then?

A. I will mark it in red pencil as nearly as I can.

Q. Now, you have marked it approximately in red pencil?

A. I have marked the old basin trail in red pencil with the word in red pencil "Trail"; the trail from the bunk-house up the creek I have marked in red pencil above the word cabin by the letter "T"; the other trail from the Jualpa dam to the portal of Gold Creek tunnel in Snow Slide Gulch is shown by red lines marked "T-1" in each case.

Q. Now, is that approximately the trails that you found up there when you went up—what day was it?

A. That was August 3d.

Q. And Harri was doing that himself—had done that himself in two days, had he?

A. No, it had been three days?

Q. You were there in the afternoon of the 3d?

A. Yes.

Q. And Harri was working alone on that?

A. No, Harri was not working alone.

Q. He was working alone those two or three days on the trail? A. No, sir.

Q. Who was helping him?

A. I think he had help on this lower trail from the time—to the best of my knowledge, this trail from the Jualpa dam up to the portal of the Gold Creek tunnel, but very little of that work was done

(Testimony of R. A. Kinzie.)

by Harri; that was done by others.

Q. Between the 1st and 3d of August?      A. Yes.

Q. Don't you know it is a fact, Mr. Kinzie, that Harri has [285—135] testified and you have testified that there was nobody up there helping Harri between the 1st and the 3d?

A. No; that was on different trails; you have asked him about trails and he became confused on it; the trails he was referring to were the trails up the canyon; I don't think he testified about the trails below the cabin.

Q. I am talking about the first trails, between the 1st and 3d?      A. Yes.

Q. Do you want the Court to understand now that between the 1st and the 3d of August there was anybody assisting Harri on the trails that you have marked out on this map?

A. I wish the Court to understand there were men assisting Harri in building the trails that I have just marked.

Q. During the period between the 1st and 3d?

A. During the period between the 1st and 3d.

Q. Who was up there helping him?

A. Russell Casey was one of them.

Q. When did you find that out?

A. When did I find that out?

Q. Yes.

A. I knew there was some one there, but I have only found out lately about it by referring to our payroll and from a conversation with Russell Casey.

Q. Then, if you testified before that there was no

(Testimony of R. A. Kinzie.)

one up there to help Harri, you were mistaken about it?

A. If the question were asked in that way I would not be mistaken, it just depends on how the question is asked.

Q. Now, Mr. Kinzie, in your testimony in this other case, No. 2155, Volume 3, found at Page 903, didn't you testify as follows, referring to those two trails: "A. No, the two trails that were built were leading from the cabin, one up the grade and one around the cliff over the top; that came around by the side of our present dam—that is evidently [286—136] the other claim, which is not involved in this controversy." Now, I will ask you if I didn't ask you this question: "Q. After this cabin that Harri occupied down there at Snow Slide Gulch was built—not considering the men who assisted in building that cabin, but what other men besides Harri did you have working up there along about the 1st of August, if any? A. There were no other men. Q. When did you put on any other men up there to assist Harri? A. I think it was September 10th." Did you so testify in that other case?

A. I did; those trails reported there were not the trails you are just asking about; those were the trails above the bunk-house.

Q. Let's see, Mr. Kinzie,—“Q. After this cabin that Harri occupied down near Snow Slide gulch was built—not considering who assisted in building that cabin, but what other men besides Harri did you have working up there along about the 1st of August,

(Testimony of R. A. Kinzie.)

if any? A. There were no other men. Q. When did you put on any other men there to assist Harri?

A. I think it was September 10th." Did you testify that way, or didn't you?

A. I did, and it is perfectly correct.

Q. I want to know if you testified that way?

A. Yes, I testified that way.

Q. Now, I don't believe I asked you this question yesterday, Mr. Kinzie,—respecting the distance down the creek from where your dam was ultimately constructed before you reached any grade, I will ask you if, on the application for the preliminary restraining order in this case respecting this distance I have just mentioned, if you didn't testify as follows: "Q. Now, it is a fact, isn't it, that when you claim you got your diversion that there was a distance between where you put your flume in the creek to where your [287—137] grade commenced, of about three or four hundred feet that wasn't graded or built on there? A. There was a distance beyond the present penstock. Q. No, I mean away up in the flume near your dam where you say you made your diversion, now, at that point, if you follow that down the present flume line, the time you claim to have made the diversion there was a distance there of about three or four hundred feet that had not been graded for a flume line at all—just the earth in its natural state and condition? A. There was a distance that had not been graded from two to three hundred feet; yes, sir—around close there. Q. As I understand your testimony, as you gave it in that



(Testimony of R. A. Kinzie.)

other case, you stated about 300 feet? A. Yes, 300 feet; that would be close to it, between two and three hundred feet—I could give this distance a great deal more accurately from that map.” That is winding up that answer. Did you testify that way in the other case? A. I very likely did, yes.

Q. Now, Mr. Kinzie, this large map here Plaintiff’s Exhibit 1, or a tracing similar to that, the plaintiff company has been posting them up about in public places, have they not, around this town and elsewhere?

A. No, I don’t think any similar to that; there is a small outline map that is posted—that was posted about a year ago in September.

Q. It covered virtually the same property you have covered on this map, does it not?

A. It covered part of the same property shown on that map—nearly all of it.

Q. What part?

A. I am not able to say without comparing the two maps; there has been property acquired by the company since the date of that map. [288—138]

Q. That has been used as an advertising medium to sell this stock, hasn’t it?

A. They are not selling any stock.

Q. Haven’t they had any stock on the market?

A. No, not to my knowledge, and I don’t think they have.

Q. Will you swear positively to that?

A. Will come close to it.

Q. How close,—do you swear positively to that?

(Testimony of R. A. Kinzie.)

A. I don't know; it is none of my business.

Q. Now, this mill up in the basin, Mr. Kinzie,—there are a few straggling questions I want to ask you—that you have pointed out on this map as being built up about the word “Mine Workings,” I believe you said to Mr. Hellenthal that was never built as a commercial mill but was principally for testing purposes? A. No, I didn't say that.

Q. What did you say?

A. I said we used it for testing purposes and sampling purposes, and has been run for the last 10 or 12 years.

Q. In other words you haven't made it a commercial proposition, running that mill.

A. That mill has paid for itself; yes, sir; but that wasn't the object of doing the work; the mill can be a commercial success and also turn out the results of sampling.

Q. But you used it principally how many years for sampling purposes? A. Ever since I came here.

Q. And that would be 1901—are you still running it? A. No.

Q. When did you cease, Mr. Kinzie?

A. Year before last.

Q. And you consider as a mining man that using that mill for that [289—139] purpose, and running this underground work, was looking toward the opening up and the developing of this property?

A. I certainly do, yes.

Q. Now, just one more question along the line as to who was assisting Harri up there between the 1st

(Testimony of R. A. Kinzie.)

and the 3d—when did you find out, Mr. Kinzie, that anyone was assisting Harri up there between the 1st and the 3d?

A. Oh, I cannot say the exact time when I found it out.

Q. Did you find it out since you testified in this case on the preliminary hearing?

A. As to who it was?

Q. Yes.      A. Yes.

Q. Well, now, did you know at the time you testified on the preliminary hearing that anyone assisted Harri to make the two trails that you have just marked on this identification exhibit?

A. I have shown more than two trails.

Q. Well, I will ask you if you knew at the time that you testified on the preliminary hearing for an injunction in this case that anyone had assisted Harri between the 1st and 3d of August, inclusive?

A. In doing what work?

Q. Doing any work looking toward the building of trails.      A. Yes.

Q. You knew it at that time when you testified?

A. Yes.

Q. Well, now, let's see if you didn't testify as follows in regard to that—

A. Be careful how you ask the question, Judge.

Q. Yes, see if you answered them this way or not: "Q. Didn't anybody go with him"—referring to Harri, found on Page 41 of the transcript of the testimony that was taken on the preliminary hearing for a temporary restraining order in this [290—

(Testimony of R. A. Kinzie.)

140] case. Now, referring to Harri going up there the question was as follows: "Q. Didn't anybody go with him—you know if anybody didn't go with him, don't you? A. No, I don't. Q. You didn't send anybody up there with him? A. I do not even remember whether we did or not; to the best of my recollection I don't remember sending anybody. Q. And he went up there; at least you sent him up there—now, what time after that did you go up there, Mr. Kinzie? A. Well, it must have been two or three days later. Q. Now, you testified on the trial of *the trial* of that Basin case that you went up there on the 3d or 6th, and that you didn't remember which, didn't you? A. I very likely did. Q. Now, you say that your memory is that you went up there absolutely on the 3d? A. I will change it from the 3d to the 6th, but my recollection is the 6th—I don't remember exactly the date; I will get that date exactly, I should have done it before." Now, you testified to that on the other hearing, did not not, Mr. Kinzie?

A. No, I told you, Judge, I don't think that is correct; part of it is correct and part of it I don't think is.

Q. Now, the part that you testified that you didn't send anybody up there with Harri is correct, isn't it?

A. I don't remember testifying about it at all, but I think very likely it is as reported there; the question must have been taken down—

Q. Further on—"Q. Now, how much work did you say Harri did? A. He had leveled off a place



(Testimony of R. A. Kinzie.)

just about where the Alaska-Juneau cabin has been constructed; he had also cleaned out a trail on the right-hand side of the creek going up to a point about 75 feet above the cabin, and at that time he had put some plank across a log in the middle of the creek, by which to cross the creek; and he had started, if I remember correctly, on the brushing out—Yes, I am quite sure that he [291—141] had started on the brushing out of the trail to take him up to the Beaver Butte, along the top of the cliff and down to a point practically identical with the present intake of the flume.” Did you testify to that?

A. To tell the truth, Judge, I never testified to the Beaver Butte.

Q. Did you testify substantially that way?

A. Yes, I did; as far as the trail above the cabin goes, I did.

Q. “Q. He knew just where the flume was going to be? A. No, sir. Q. This man had an artificial limb? A. Yes, sir.” You testified to that didn’t you?

A. Very likely did, don’t remember.

Q. “Q. All this work was done between the 1st and 3d day of August by this one-legged man. A. It was.” You testified to that on the preliminary hearing, didn’t you?

A. Very likely did; it is quite true, also.

Q. And you knew at that time there was somebody else assisting him, did you?

A. Not on that work, no.

Q. Well, what work did Harri do up there between

(Testimony of R. A. Kinzie.)

the 1st and 3d, if the work—if it isn't the work that Harri had testified he did.

A. Well, Harri did do that work just as I testified.

Q. And he did it from the 1st of the 3d?

A. From the 1st including the 3d.

Q. **And there was no one helping him?**

A. Not on that work.

Q. What work were you testifying to, then?

A. I was testifying in regard to the trail leading from the Alaska-Juneau bunk-house up the canyon.

Q. The one you are testifying to now?

A. That is the trail leading from the bunk-house up the creek, up [292—142] to where he had a plank across the creek.

Q. Those are the only trails that were made between the 1st and the 3d.      A. No.

Q. Had Harri made other trails besides those?

A. No, I didn't say that Harri made them.

Q. Did you see any other work that was done up there on the 3d other than what you have testified concerning and marked out on this exhibit?

A. No, that is all the work I saw, the work I have marked on the exhibit.

Q. You then want to be understood that this testimony you gave upon the preliminary hearing, that you didn't intend to say there was nobody up there?

A. On the trails as I testified to in the preliminary hearing, that is exactly correct.

Q. This question here: "Q. He knew just where the flume was going to be? A. No, sir. Q. This man had an artificial limb? A. Yes, sir. Q. All

(Testimony of R. A. Kinzie.)

this work was done between the 1st and 3d of August by this one-legged man? A. It was." And this time you state you don't remember anyone helping Harri up there between the 1st and 3d?

A. There wasn't anyone helping on those trails, but on the trails up to the bunk-house.

Q. Then, you misunderstood these questions on the preliminary hearing?

A. Not at all, I understood them perfectly.

Q. Have you ever testified in any of these cases that Harri had anybody up there between the 1st and the 3d, helping him? A. Yes.

Q. That there was anybody up there with Harri from the 1st to the [293—143] 3d? A. Yes.

Q. In what case did you testify to that?

A. I don't remember, I testified in four or five of them, I don't remember which one.

Q. You didn't testify in the Basin Case, No. 2155, did you, that he had anybody up there with him?

A. I don't remember.

Q. You evidently didn't testify in the application for a preliminary injunction in this case, that he had anybody up there with him, did you?

A. I don't remember.

Q. Now, Mr. Kinzie, I think you said either on your cross-examination or direct examination yesterday that since the trial of this case upon the preliminary application for an injunction, that you had installed a new air-compressor somewhere up about or near Snow Slide Gulch, is that true?

A. Quite true.

(Testimony of R. A. Kinzie.)

Q. Where is that installed with reference to the portal of your Gold Creek tunnel?

A. About 700 feet this side.

Q. It is included in that sheet iron building or corrugated iron building?

A. It is covered by a corrugated iron building.

Q. What did you say was the capacity of that, what cubic foot of air per minute?

A. I didn't say.

Q. Well, what is it?

A. That machine is about 900-980, I think is the exact capacity.

Q. This other air-compressor that you have got installed at the portal of your Gold Creek tunnel, what is its capacity? [294-144]

A. You mean the water-driven compressor?

Q. I mean the one that you have installed there?

A. That is a water-compressor.

Q. The one at the mouth of the Gold Creek tunnel?

A. The old one is larger than the new one.

Q. What is the capacity of that?

A. I don't remember.

Q. Does it exceed 900 cubic feet per minute?

A. I think so.

Q. You testified before that it was between 750 and 800 cubic feet a minute, didn't you?

A. That is on our mill site, we have a compressor that size there.

Q. You think the one at the portal of your Gold Creek tunnel is probably larger than the one you have installed lately this side of the gulch?



(Testimony of R. A. Kinzie.)

A. Yes.

Q. Those together would have a capacity of somewhere between 1,800 and 2,000 cubic feet of air, would they? A. Yes.

Q. And what is the capacity of the one down at the mill? A. 750 or 800 cubic feet.

Q. That would make somewhere in the neighborhood of 24 or 2,500 cubic feet capacity? A. Yes.

Q. Now, this new air-compressor you have lately installed up near Gold Creek, this side of Snow Slide gulch is electrically driven, is it not? A. It is.

Q. And the one at the mouth of Snow Slide gulch, or at the portal of your tunnel has been partially driven by water at times and then driven by electricity at times, has it not?

A. It can be driven wholly by water or partly by electricity. [295—145]

Q. One side can be driven by electricity and the other by water at the same time?

A. No, if you haven't sufficient water you can use electricity with the water.

Q. Now, Mr. Kinzie, you haven't since you left the witness-stand *yesterday* to find out accurately what your flume will carry between the Snow Slide gulch—the portal of your Gold Creek tunnel and the dam, have you? You have not made any calculation on that?

A. No, I haven't; you mean the flume from the portal of the water tunnel?

Q. The water flume? A. No, I haven't.

Q. I believe you say it takes the full capacity of

(Testimony of R. A. Kinzie.)

your flume to run your compressor at the portal of your tunnel?

A. No, I don't think it would take the full capacity of that flume, it would take approximately the full capacity the way we have been running it.

Q. Then, when you run that air-compressor you would have no water to come down to your mill on the beach and to pass up through your air-compressor between the beach and Snow Slide Gulch?

A. That is the reason we don't run it.

Q. At what time in the development of your property do you think it will be necessary for you to run both of these compressors?

A. We are installing at the present time a very much larger compressor—a 4,000 cubic foot compressor—at a point just this side of the Gold Creek tunnel.

Q. When do you calculate to use all three of these compressors up there?

A. The water compressor we will keep as a spare one; we haven't enough water as it is for the mill.

Q. You don't use any water for power at your mill, do you? [296—146] A. For power?

Q. Yes.

A. No, we are using the water for battery purposes.

Q. What do you mean by battery purposes?

A. We are using it for concentration, for battery water in the stamps, using it in the tail-race, using it for mill purposes, using it lower down for fire protection,—there is a thousand and one uses for water.

(Testimony of R. A. Kinzie.)

Q. How much of the water, Mr. Kinzie, do you calculate that is coming through your flume that you are using in your mill now—I don't mean for sluicing the ground off or any of that water that is overflowing down here at the end of your flume?

A. You mean at the present minute—present time?

Q. Now, yes, sir.

A. We are using something over one-half the capacity of the flume.

Q. Then, if your flume carries between four and five thousand miner's inches of water you would be using about 2000 miner's inches?

A. For milling purposes?

Q. For milling purposes.

A. We are carrying a portion of that water down to the wharf for fire protection, the tail-race too—

Q. Just wait, Mr. Kinzie; I will ask you about those other matters afterwards; I want to know now just how much you are using in your mill for legitimate milling purposes?

A. If you will tell me what the legitimate purposes are I will answer—I will be able to answer your question.

Q. Fire protection is not one and washing tailings is not one—I want to know what you use the water for in the mill?

A. Washing the tailings away is one of the most important uses.

Q. I want to get at—the portion you wash your tailings down with comes out of the flume and goes

(Testimony of R. A. Kinzie.)

down the hillside as [297—147] illustrated in that photograph? A. Part of it.

Q. Now, leave that out—I want to know about the water that comes down and passes through your mill? A. Yes, sir.

Q. About how many miner's inches, or what proportion of the capacity of your flume, do you use for that purpose?

A. You mean that is actually passing through the mill building?

Q. Yes.

A. I should say perhaps two-thirds at the present time.

Q. About two-thirds of the capacity of the flume?

A. I, of course, don't mean to be understood as saying that is the exact amount, but the approximate amount. In the first place the water is used in the rock-house for washing the ore as it comes down from the tram line; then a large quantity of the water is used in the bateries, the stamp batteries—that, I should say, is one of the largest uses; then the riffing tables and concentrating tables; there is more water used in the tail-race along each floor; there is additional water used at the Chilean floor; there is more water that is used on the amalgamating table and at the concentrating table on the lower end; there is the overflow water that is collected from the slimes, and so forth, that is used to carry the water from the mill-race into the tail-race; that is the water used in the mill building.



(Testimony of R. A. Kinzie.)

Q. How many tons of water do you use per ton of ore?

A. There will be from 15 to 18 tons depending upon the volume of the stream and the amount of tonnage going through the stamps.

Q. Approximately, Mr. Kinzie, how many miner's inches of water, or what fractional part of your flume constitutes the overflow that is shown in the exhibit which I handed to you for [298—148] identification yesterday, down here at the mill?

A. Oh, I couldn't say that.

Q. Has your flume been flowing to its full capacity?     A. The flume itself?

Q. Yes.     A. Yes.

Q. Then if you are using two-thirds of the capacity of your flume in the mill, there is about one-third flowing out at the end and going down the hill?

A. Yes.

Q. How much water, Mr. Kinzie, has been going to waste up there at Gold Creek at the overflow place of your flume, somewhere, I think, between your new air-compressor that you have installed since the commencement of this suit and the air-compressor at the face of the tunnel?     A. No water going to waste.

Q. There had been no water going to waste and going down the hill there?

A. No, not between the compressor and the portal of the tunnel.

Q. What water has been going to waste then between your new air-compressor and, say, your first tunnel coming towards Juneau that your flume runs

(Testimony of R. A. Kinzie.)

through?      A. Lately?

Q. Yes.      A. None.

Q. How long ago did that overflow that was there cease?

A. The overflow that you speak of was let's see, that was three or three and a half months ago.

Q. How often are you up on that flume line, Mr. Kinzie?

A. Why, usually, except when I am here in court, every other day or every second day?

Q. And since the trial of this case on the preliminary hearing [299—149] you say there hasn't been any water going to waste up there?

A. I don't say that.

Q. Well, has there been any going to waste up there?

A. I think that waste-way was taken out—taken out just as soon as the high water came in the spring.

Q. Do you remember what time that was?

A. No, I don't; it was soon after the water started running in Gold Creek.

Q. Approximately, Mr. Kinzie, what time—that is indefinite?

A. I should say along in April, perhaps; I will say positively there has been no overflow or any amount of water going to waste between the points I have indicated to you since April.

Q. Is there any overflow of water between your air-compressor at the mouth or portal of your tunnel and your dam?

A. There is right at the dam, yes; there is a sand

(Testimony of R. A. Kinzie.)

box there and the water runs into that to keep the sand washing out through the bottom.

Q. Now, then, Mr. Kinzie, is it your contemplation to carry this development on to such extent that you will use both the air-compressor at the portal of your Gold Creek tunnel and the new air-compressor a little further down towards Juneau which has been installed?

A. You mean use the old water-compressor again?

Q. Yes, sir.

A. It is very doubtful, Judge; we cannot spare the water; we need every bit of water we can get through the flume at the mill, and for that reason it is very doubtful.

Q. Your contemplation is to use the one that you have just lately installed and then put in a larger one for emergency purposes?

A. No, the larger one is for operating; just as fast as we are getting the places opened up we are getting more machines and that requires [300—150] more water.

Q. You are running the new compressor now?

A. Yes.

Q. Full capacity?      A. Full capacity.

Q. Running by electricity?

A. Driven by electricity.

Q. What is *you* air-compressor driven by down here at the mill?      A. Electricity.

Q. Now, Mr. Kinzie, do you know that the Alaska-Juneau Company has a contract with the Treadwell

(Testimony of R. A. Kinzie.)

Company to supply them with electricity to drive this air-compressor?

(Not answered because of objection.)

Q. Now, there is just one more question, Mr. Kinzie—in this cause No. 2155 of the Circuit Court of Appeals, the Ebner Gold Mining Company against the Alaska-Juneau Company at page 921, I will ask you if you have again testified concerning Harri going up there between the 1st and 3d of August, and those who assisted him or who were there with him, in doing this work, or any work,—I will ask you if you didn't testify as follows concerning this matter on that question when it was before this court for trial: “Q. I understand you had Harri up there from sometime about the 1st of August to some other specific date, before you put anybody there to assist him. Now, leaving out the question of this man who assisted him in building the house or built the house or assisted Harri in getting the lumber before the house was built, leaving those men out of the question, I wish you would fix the date specifically when it was you sent another man up there to help Harri? A. I was on the ground with Hendrickson on September 10th. Q. Hendrickson was the man that took the contract to build the [301—151] tunnel you expected to put through there at Snow Slide gulch, to put your flume through? A. Yes, the contract was afterwards signed up.” You testified to that, didn't you? A. I did.

Q. “Q. Then you were up there on the 10th—that was the first work you had done outside of what



(Testimony of R. A. Kinzie.)

Harri had done? A. Yes, sir, that is, on the flume.

Q. He didn't do the work on the flume? I don't want to confine it to that. A. On the flume or grade—that was the first time we put any additional men to work on the flume or grade. Q. Outside of the service Harri performed? A. Outside of the work Harri performed.” Did you testify that way?

A. I did.

Q. “Q. On the 25th day of August, 1910, can you state specifically what had been done by Harri—do you know the condition of affairs up there on the 25th of August, 1910—up to about the 25th? I want to know what Harri had done up there? A. Harri had moved up at that time and was living in the cabin which had been previously constructed. He had built a trail from the house, cutting steps in the side of the bank up the grade line; he had also constructed a trail over the hog-back and over the cliff beyond to Gold Creek at a point where our dam was afterwards established; he had gone up the canyon of Gold Creek and had turned some water out of the creek, to be used for sluicing off the gravel on the east side of Gold Creek—had cleared off some of that gravel at one point for a distance, I should say, of 125 feet—we will say 100 feet—above the present intake of our flume. Q. He had done considerable work for a lame man from the 1st of August up to the 25th? A. He had done a reasonable amount of work; yes.” You testified to that, didn't you?

A. I did. [302—152]

Q. Now, Mr. Kinzie, you testified yesterday that

(Testimony of R. A. Kinzie.)

you were first considerably obstructed and hampered in the performance of your work up there by the Ebner people, but you didn't say anything about your company throwing any obstacles in the way of the Ebner people, did you?

(Question not answered—recess for 10 minutes.)

Q. Do you remember about what time in July, 1910, Mr. Bent and his party came up here connected with the property of the Ebner Gold Mining Company? A. No, I don't.

Q. Do you remember they were here sometime in 1910?

A. I remember they were here during the summer of 1910, but I cannot say at this time whether it was July or some other month.

Q. Do you remember what time Mr. Bradley came here in the summer of 1910?

A. He usually comes in the month of June, latter part of May or during the month of June of each year.

Q. Do you remember whether or not he came in June or July of that year?

A. The best of my recollection is it was the early part of June.

Q. You wouldn't be positive of that date, Mr. Kinzie? A. No.

Q. He was here a little ahead of the Bent party, wasn't he?

A. I rather think he was; I think he was here at the same time; I don't remember, however, exactly.

Q. Was it prior to August 1st that the Bent party

(Testimony of R. A. Kinzie.)

was here—prior to the time that Lock Mulligan went up, as you said, and posted some notice—I will fix that as the date?

A. I cannot say positively as to that; my recollection is that it was, but I am not sure about that.

Q. You know in August of that year you commenced very active work [303—153] up there, did you not, Mr. Kinzie?

A. July and August, yes.

Q. July and August? A. Yes.

Q. And July, I believe, the Canyon or the New Oregon was located, which one, do you remember?

A. The Oregon claim was located in July, and the right of way for the flume was located in July and the preliminary lines for the flume around the shore of Gastineau Channel, that was all done in July.

Q. You mean that the preliminary surveys that you had made, that you testified concerning, were made in July? A. Yes, sir.

Q. Do you remember if that work was done prior to the Bent people coming up here, or just after?

A. I cannot say that; my impression is that it was before they came up, but I am not sure as to that.

Q. But you showed a great deal more activity in and about this part of Gold Creek at that time than you ever have before, didn't you?

A. As to diverting the water of Gold Creek?

Q. Yes. A. Yes.

Q. You hadn't made any effort before that time to divert the water of Gold Creek, had you?

A. No.

(Testimony of R. A. Kinzie.)

Q. And you hadn't done anything in and about Gold Creek either on your so-called Oregon claim or the Colorado claim, or any of those claims, in and about Gold Creek since the year 1904 except what you testified about this morning?

A. We had acquired all the necessary rights for flume and tunnel and things of that kind. [304—154]

Q. I say you hadn't done anything more right around in this vicinity except what you testified to this morning?

A. No, not in addition to what I testified to.

Q. Did you know that the Bent party was coming up here with the expectation of opening up that property on a larger scale?

A. I knew nothing about the plans of the Bent party.

Q. You knew they were up here in connection with that property, didn't you?

A. I must have heard it after they came up here, but I didn't pay any particular attention to what they were doing.

Q. Now, Mr. Kinzie, at the time that you complain you were deprived of the water, which was the foundation of the commencement of this action, how much water were you at that time deprived of?

A. If you will state the time I can answer the question.

Q. The time you commenced this action here?

A. What is the time?

Q. In December sometime; I think in December,



(Testimony of R. A. Kinzie.)

and you claim there had been a shortage of water there, I think, for some three or four weeks prior to the time of the commencement of the action, say in the latter part of December or the early part of January? A. What is the question?

Q. I asked you how much water you were deprived of by the action of the defendant company at the time you commenced this action, sometime in the latter part of November or the first of December?

A. All of the water that was then flowing in Gold Creek.

Q. How much was it?

A. I cannot tell you without looking over the notes in the case; I haven't looked over the records since the trial of that case. [305—155]

Q. Do you know whether they deprived you of water at that time, or for any period of time, that would have run your air-compressor at the mouth of Snow Slide Gulch?

A. My best recollection is that during the most of that period there wasn't sufficient water to run the entire compressor, but there was enough water for jacket water, and running a part of the compressor.

Q. How do you know that if you don't know the amount of water they deprived you of?

A. That is the best of my recollection; we were entitled to all of the water flowing in Gold Creek and we were cut off, and that is the origin of that complaint.

Q. How much water does it take to run a water-compressor of the size of the one you have at the

(Testimony of R. A. Kinzie.)

portal of the Gold Creek tunnel?

A. That would take from 70 to 100 gallons of water per minute.

Q. 75 to 100 gallons of water per minute?

A. Yes.

Q. Just for cooling purposes?

A. Cooling purposes.

Q. On one air-compressor?      A. Yes.

Q. And on the compressor you have installed at the mouth of your tunnel, or portal of your tunnel, in November or December of last year, how much would that require?

A. That is approximately—I would figure it backward from the compressor we are putting in now—I had that in mind; that requires 250 gallons per minute for jacket water; taking any proportion of it, it would take 75 to 100 gallons. [306—156]

Q. Which one of these air-compressors are you talking about, the larger one?

A. No, the larger one we are installing requires a vast amount of water in proportion to the cubic feet of air per minute.

Q. It is somewhat in proportion to the cubic feet per minute of air that the water is in proportion to?

A. Yes.

Q. That water could have easily been obtained by you when this action was commenced, could it not, by pumping out of Gold Creek and the streams flowing into Gold Creek?      A. No.

Q. You could have obtained enough water for jacket water at that time?

(Testimony of R. A. Kinzie.)

A. The water was all turned out at that time.

Q. The place where the defendant company took it out was a considerable distance up the creek—there was quite a bit of water in the creek between that and the air-compressor, wasn't there?

A. My impression is that all the water had been turned out, but I should say—

Q. You didn't go down the creek at that time to examine that, did you?      A. Down the creek?

Q. Yes, in the bed of the creek to see if there was any water flowing in there or not?

A. No, I didn't go down the creek-bed.

Q. Now, not having the amount of water that the Ebner Company got from the time that they closed you down until the water got plentiful, you couldn't state just exactly how much benefit that water would have been to you, could you?

A. I know what we were getting just before they cut us off.

Q. Well, did the water grow less or more plentiful after that, [307—157] for a while?

A. The Ebner people had the use of it, and we don't know how much water there was.

Q. You know from climatic conditions whether it did or didn't?

A. I don't remember the climatic conditions at that time, whether it decreased or increased; they took the water, and we were without the use of the water at that time.

Q. Now, Mr. Kinzie, isn't it a fact for a period each winter, isn't there a period from 4, 5 or 6 weeks

(Testimony of R. A. Kinzie.)

that there isn't sufficient water in Gold Creek to be of any benefit to you or for you to use on your air-compressor at the mouth of your tunnel?

A. There are periods in the winter-time when the water becomes quite low, but even when the water is low we would always have enough water in Gold Creek for jacket water.

Q. You think you would have a flow of at least 75 gallons per hour when the water was low in Gold Creek? A. Oh, yes.

Q. Think there would be plenty in there for that purpose? A. Yes.

Q. Did you state per hour or minute?

A. Minute.

Q. Then do you think that there was sufficient water in Gold Creek during that season, November, December and January of 1913 and '14, to furnish water for your big new air-compressor that you are installing—for jacket water?

A. Yes, during the winter that you are talking about there was; yes.

Q. How was it the winter previous to 1913—1911 and '12, about your having water at your air-compressor at the portal of the Gold Creek tunnel?

A. The winter of 1910 and spring of 1911, that was a good winter; we had water practically all winter on that small compressor; [308—158] the winter of 1912 and spring of 1913, I couldn't tell if we did or not?

Q. Don't you know during one of those periods, one of those winters, you closed down about three or four weeks?



(Testimony of R. A. Kinzie.)

A. In one year since 1910 when the water got quite low, but I have forgotten what year it was—I have forgotten about that.

Q. You don't contend, Mr. Kinzie, that during the low periods of water in Gold Creek in the winter time, that you expect to get enough water to run your 35 or 40-stamp mill in the way you testified you have been using it, do you?

A. Not exactly, no; it would require a great deal more water than we could get from Gold Creek during the low water.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Kinzie, in response to the questions of Judge Winn, you testified that you had, between the time that you came here and the time that you caused the posting of the Mulligan notice on August 1st, 1910, that you had some plan of also driving a tunnel from Gastineau Channel—did you consider any other plans or any other schemes to determine the feasibility of the project during that period?

Judge WINN.—We object to that as not rebuttal testimony.

Mr. HELLENTHAL.—I didn't ask him the question before—I overlooked it, for that reason I ask it now.

The COURT.—Then you don't pretend to say that this is redirect examination—that you merely recalled the witness?

Mr. HELLENTHAL.—Yes.

(Testimony of R. A. Kinzie.)

A. Yes, there were other schemes that were considered.

Q. What was the scheme?

A. There was one scheme of building a mill in Silver Bow Basin; [309—159] there was also another scheme considered of taking the ore out through the tunnel situated the same as the present tunnel is now situated to a mill in Jualpa Basin, and the present scheme was considered, and the further scheme of a sea-level tunnel from Gastineau Channel.

Q. Now, in the fall of 1909, I think you testified in response to Judge Winn's question that Mr. Bradley at that time formally instructed you upon the plans to pursue, is that right? A. He did.

Q. And you referred to certain correspondence had at that time between you and Mr. Bradley, upon that subject? A. I did.

Q. Mr. Bradley gave you directions, I think you testified in response to Judge Winn's question, in the fall of 1909 to go and locate the water as you did, and go ahead with the scheme, is that right?

A. Yes.

(Objection by Judge WINN.)

The COURT.—Mr. Hellenthal, I would like for you to let the Court know whether you claim this is rebuttal or whether you are still interrogating the witness under the permission given you a few minutes ago?

Mr. HELLENTHAL.—This question is just a preliminary question on his testimony in response to

(Testimony of R. A. Kinzie.)

Judge Winn's question.

The COURT.—That last question is a direct question to the witness.

Q. Mr. Kinzie, I hand you here letters passing between you and Mr. Bradley in the fall of 1909 touching this water right here, and the flume construction, and directions given to you by Mr. Bradley, correspondence from San Francisco to which you have referred; I ask you to identify, merely identify those letters as being genuine, that is all.

A. Yes, these are letters I received, and some other letters. [310—160]

Q. Those letters constitute the correspondence between you and Mr. Bradley upon that subject?

A. They do.

Mr. HELLENTHAL.—I would like to have those letters marked Plaintiff's Exhibit Nos. 17, 18, 19, 20 and 21 for identification. (Whereupon said letters were so marked.)

Q. I will now ask you whether these letters marked for identification Plaintiff's Exhibit Nos. 17, 18, 19, 20 and 21 represent the correspondence between you and Mr. Bradley upon that subject?

A. They do.

Q. Between what dates did that correspondence take place?

A. The letters cover a period between January 28, 1909, to December 11, 1909.

Q. And they contain the directions to you upon that subject? A. They do.

Q. The whole correspondence, Mr. Kinzie, is

(Testimony of R. A. Kinzie.)

necessary in order to find out the specific instructions to you? A. Yes.

Mr. HELLENTHAL.—We now offer this whole correspondence, your Honor.

(Whereupon court adjourned until 1:30 o'clock P. M.)

AFTERNOON SESSION.

June 24, 1914, 1:30 P. M.

R. A. KINZIE, on the witness-stand.

Direct Examination (Cont'd.).

(The said exhibits were not received because of objections.)

Q. I now hand you here a letter marked for identification Plaintiff's Exhibit No. 22, and ask you to look at it and state if you know what that is.

A. I do. [311—161]

Q. What is it, Mr. Kinzie, the original letter received by you?

A. The original letter received by me from Mr. Lewis P. Shackleford, dated November 19, 1909.

Q. That letter is in response to an inquiry you made of Mr. Shackleford in regard to the flume rights and locations of water rights to which you testified on your cross-examination? A. Yes.

Q. And relates to these same water rights and flume rights that you testified about on your cross-examination? A. It does.

Q. And is part of the communication had by you in regard to that matter? A. Yes.

Mr. HELLENTHAL.—I now offer that letter in evidence.



(Testimony of R. A. Kinzie.)

(Not admitted because of objection.)

Q. The inquiry was made from Mr. Shackleford, your attorney, to find out how you would proceed about this work? A. It was.

Q. This letter was written you telling you how to do it?

(Not answered because of objection.)

Q. Now, Mr. Kinzie, Judge Winn was examining you at some length in regard to the use you were putting this water to—you have stated in a general way that the mill you are constructing would ultimately have a capacity of 12,000 tons per day; the general statement of a milling plant of such capacity, 12,000 tons per day, to a man not familiar with mining is not very clear as to how large that plant is; I wish you would compare in any way that you can so it will be plain to a layman how large a milling plant of 12,000 tons per day is, so as to show the use you have for the water.

(Not answered because of objection.) [312—162]

Q. Mr. Kinzie, Judge Winn examined you in regard to water that has been wasted—are you wasting any of the water diverted by you from Gold Creek?

A. No, I am not—we are not wasting any water.

Q. Is there any part of that water that you are not now, and will not be using at all times from now on, in the future?

A. We require not only that amount of water, but more water than we have at the present time.

Q. In connection with what do you require it?

(Testimony of R. A. Kinzie.)

A. With the milling operations principally; in fact, the mill when completed, even allowing a minimum of water for a ton of ore treated, will require the full capacity of the flume up to its carrying capacity as it is at present built, and for other purposes it would require additional water.

Q. The mill, for what purpose will that require water?

A. For milling purposes.

Q. What do you mean by that?

A. Batteries, concentrating and amalgamating purposes.

Q. That is purposes outside of power?

A. Purposes outside of power, yes.

Q. Need that much water without reference to the power water, to propel the machinery?

A. Yes.

Q. At the present time you are using it for battery water, and also for carrying on your construction work on the mill site? A. We are.

Mr. HELLENTHAL.—I guess that's all.

Judge WINN.—No more questions.

(Witness excused.) [313—163]

The plaintiff, to further maintain the issues on its part, introduced as a witness F. W. BRADLEY, who then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. W. Bradley, for Plaintiff.****Direct Examination.**

(By Mr. HELLENTHAL.)

Q. Your name is F. W. Bradley?      A. Yes.

Q. You are president of the Alaska-Juneau Gold Mining Company?      A. Yes, I am.

Q. How long, Mr. Bradley, have you been president of that company?      A. 15 years.

Q. You became connected with it at what time?

A. In the summer of 1900.

Q. You have been in charge of the operations of the company ever since?      A. I have.

Q. Do you know what the plans of the Alaska-Juneau Gold Mining Company with reference to future developments were when you became connected with the company?      A. I do.

Q. You may state in a general way, Mr. Bradley, what the plans of that company were in so far as they bear upon the appropriation of the water of Gold Creek that is now in dispute—the enlarged development of the property in that connection.

A. The plans of the company when I became connected with it were to run a tunnel from Gold Creek at the foot of Snow Slide Gulch into the mine; a tram from that tunnel to some point either in the Jualpa Basin or on the shore of Gastineau Channel for the milling plant; and in that connection it would be necessary to use water from Gold Creek, and locations [314—164] were made in 1899 to cover the right of way for such a tunnel, and the right of way

(Testimony of F. W. Bradley.)

for the diversion of water from Gold Creek.

Q. That much work had been done toward the execution of that plan at the time you became connected with the company?     A. Yes.

Q. At that time, Mr. Bradley, the company had a 35-stamp milling plant in Silver Bow Basin?

A. Yes, they had.

Q. That was situated near the apex of the Alaska-Juneau vein?     A. Yes.

Q. The Alaska-Juneau vein proper is how far away from the portal of the present Gold Creek tunnel in Snow Slide gulch—approximately how many feet?

A. It is about 4,000 feet in the tunnel to the vein.

Q. To where the vein is intercepted?     A. Yes.

Q. How far does the tunnel extend in?

A. Altogether about 6,500 feet.

Q. That was the same tunnel—it had been commenced at the time you became connected with the company?     A. Yes.

Q. Now, Mr. Bradley, what was done by the Alaska-Juneau Company under your direction looking toward the execution of this project since you became connected with the company, in a general way—just tell it in your own way.

A. It has been a problem of determining whether the development of the property on any but a large scale is worth while or not; the whole work has been directed to that end.

Q. What did you do with the milling plant that was on the property—for what purpose did you use that from then on?     [315—165]



(Testimony of F. W. Bradley.)

A. We used it first in order to make money; we then discovered that in the very short working season of each year and the very low grade of the ore, it was practically impossible; we then saw that we had to prove the value of the property—determine the average value of the ore, and the mill was used for that purpose, and we did much development work in the way of driving cross-cut tunnels across the vein; the results from these tunnels for a time were disappointing, the ore was very low grade, and we were very doubtful for a while whether we could go ahead with the project or not. We then took fresh courage and did some more cross-cut work and did some more milling, and finally determined that the property was worth taking a chance on, and running the contemplated Gold Creek tunnel, and carrying out the schemes and plans that were in view in 1899. The working out of all these operations has required so much time because of the short working season each year and because of no funds except what could be provided by the operations of 30 stamps on a very low grade ore.

Q. Now, Mr. Bradley, during this time—between the fall of the year 1900, commencing with the time that you took hold of the property in the fall of 1900, did you discuss or consider other plans for the erection of a milling plant elsewhere than on the shore of the Gastineau Channel, as originally contemplated?

A. Yes; we considered several other plans because the running of the tunnel involved more money than

(Testimony of F. W. Bradley.)

we thought the enterprise was worth in the early stages of its development, and we concluded, as one of the plans, to buy some property in Silver Bow Basin and build a large mill in Silver Bow Basin; we eventually gave that plan up as being impracticable and decided that the Gold Creek tunnel outlet was the [316—166] best plan.

Q. Now, when was it, Mr. Bradley, that you came to the definite determination to abandon all other plans and schemes and to carry out the original plan of the company of diverting the water and driving your Gold Creek tunnel?

A. That was in the year of 1909; in that year I directed Mr. Kinzie to locate the water.

Q. Mr. Bradley, do you have anything to refresh your memory from as to the dates when these various things occurred? In that connection I call your attention to a series of correspondence marked for identification Plaintiff's Exhibits 17, 18, 19, 20 and 21 and 22.

A. Yes, it was in my letter of December 11th.

Q. Just say yes or no.      A. Yes.

Q. What is it, Mr. Bradley, that you have from which to refresh your memory?

A. I have the letters that you have just handed me.

Q. Now, Mr. Bradley, you may, if possible, from looking at those letters, give the various dates when these things occurred.

A. Referring to these letters I find it was December 11th, 1909.

(Testimony of F. W. Bradley.)

Q. I now call your attention to a letter marked for identification Plaintiff's Exhibit No. 16, and ask you to look at that letter and state the date of the last time that any other plan than the plan which has since been carried out, was considered by you?

A. September 28th, 1909.

Q. I now call your attention to a letter dated in San Francisco, October 28th, and marked for identification Plaintiff's Exhibit No. 20, and ask you to look at it and state from [317—167] that letter what the date was, definitely, when you first directed Superintendent Kinzie to commence operations looking towards the carrying out of this plan of the diversion of water from Gold Creek as has been accomplished? A. October 28th, 1909.

Q. Now, on October 28th, 1909, what were your directions—what did you do with reference to the carrying out of this plan?

A. I asked Superintendent Kinzie to report to me if he could make a water location immediately below the Ebner water wheel.

Q. Did Superintendent Kinzie subsequently report to you that such a location could be made?

A. Yes.

Q. I now call your attention to a letter dated December 21st, 1909, marked for identification No. 19, and ask you to look at that letter and state when it was that you gave positive directions to your superintendent in connection with that location.

A. December 11th, 1909, I directed Superintendent Kinzie to go ahead and make the water location.

(Testimony of F. W. Bradley.)

Q. Where did you direct that water location to be made?

A. Wherever he could make it on certain contours between 4 and 500 feet above sea level.

Q. Where, with reference to the Ebner water-wheel? A. Below the Ebner water-wheel.

Q. Now, when did you come to Alaska, Mr. Bradley—when, after you gave Superintendent Kinzie these directions to which you have testified,—these directions were in writing? A. They were.

Q. Contained in written letters? A. Yes.

Q. And these letters shown you are either the originals or [318—168] copies of the letters?

A. Yes.

Q. Now, Mr. Bradley, when, after the time that you gave these instructions—these written directions which you have presented to the Court and to which you have testified, did you come to Alaska?

A. July 18th, 1910.

Q. These letters were written by you from your office in San Francisco? A. Yes, sir; they were.

Q. And directions were sent from there?

A. Yes.

Q. July 18th, 1910, you arrived in Alaska?

A. Yes.

Q. At Treadwell? A. Yes.

Q. Now, what after that did you do—what was done after that looking toward the carrying out of this plan for the diversion and appropriation of water under your directions?

A. The work had begun before I arrived.



(Testimony of F. W. Bradley.)

Q. The work had begun before you arrived?

A. Yes.

Q. And was it continued upon your arrival?

A. As to that I don't remember.

Q. Do you remember the time of the location of the water?     A. I left about August 1st.

Q. You left about that time?     A. Yes.

Q. You were suddenly called away, I understand?

A. I was, yes.

Q. What did you do in the way of directing Superintendent Kinzie with reference to carrying out the scheme that was [319—169] first planned—did you give him any other instructions upon the subject?

A. He was already going along with the work when I got here.

Q. There was nothing more to direct him about?

A. No.

Q. Now, Mr. Bradley, you are a mining engineer?

A. Yes.

Q. You are familiar with the ore deposits of the Alaska-Juneau Company?

A. I am.

Q. To what extent are those ore deposits developed?

A. Well, to an indicated tonnage of about five hundred million tons.

Q. For the purpose of making clear what that quantity consists of, how does that compare with the indicated tonnage developed in any other gold producing mines?

(Testimony of F. W. Bradley.)

A. It is very large for low grade ore—

Q. Are there any properties that show a larger developed ore body, so far as is known?

A. None that I know of in a gold mine, no.

Q. What is the character of the plant that you have in mind—Upon what plan were you operating in the year of 1910, when you commenced operations—that is to say, what was the general plan—a little more in detail than you have heretofore given it—that you were working on in the fall of 1909, and that you have carried to completion since—detail it, as near as you can, Mr. Bradley, without going into too many details.

A. I spent the year of 1910 arranging for raising the money for the preliminary work; the work in 1910 was beginning the work on the flume and the starting of the tunnel; we didn't have money enough then to push it along; and it [320—170] wasn't until the next year, 1911, that I had money enough to actively push the work.

Q. What I am asking you about Mr. Bradley, more especially, is the kind of mill you contemplated to build, and how you expected to build it, and get the ore to the mill?

A. The ore was to be mined from the tunnel level, and hauled by tram or cars through the tunnel around the hillside of the Jualpa Basin out to the hillside on the north shore of Gastineau Channel, and be milled at sea level. The water was to be conveyed along the same tramway for economy in construction; the water was to be used for milling

(Testimony of F. W. Bradley.)

and power purposes; the first power purpose was the running of the compressor to be used in the driving of the tunnel.

Q. What was the character of the mill to be constructed, Mr. Bradley?

A. Our experience on Douglas Island—

The COURT.—So far as this case is concerned, we will suspend for ten minutes.

(Whereupon a recess was had for ten minutes.)

Q. Now, Mr. Bradley, I will ask you to explain in a general way the plan of operation adopted and confirmed by you in 1909 and upon which you have since been working, so as to show the use to which the water was to be put?

A. I will have to repeat.

Q. I want you to explain, Mr. Bradley, the character of the mill, the size of it, the method of conveying the water to the mill, and the use of it at the Gold Creek tunnel to drive the compressor, and all those various things—tell it in your own way?

A. I answered that part, but I will repeat. The Gold Creek tunnel goes into the vein and under cuts the ore bodies at that level—the ores are stoped at that level, hauled [321—171] through the tunnel, around the tramway on the hillside bordering the Jualpa Basin, then around the hillside on the north side of Gastineau Channel. The flume line from Gold Creek was built along with the tramway for economy in construction. The water was to be used, first, on the small compressor used for driving the tunnel, and thereafter the water was to be used—

(Testimony of F. W. Bradley.)

Q. That tunnel—you mean Gold Creek tunnel?

A. Gold Creek tunnel; thereafter the water was to be used in the milling plant.

Q. Where was the milling plant to be situated?

A. On the north side of the hill bordering Gastineau Channel.

Q. What was to be the size of the milling plant when completed?

A. The milling plant has been laid out to consist of four units of 150 stamps each, the contemplated tonnage per stamp being 20 tons per day.

Q. Now, then, as to the stamps, Mr. Bradley, what other apparatus does this mill contain for the purpose of crushing the rock?

A. There is the usual rock breakers in the rock house, followed by some apparatus for sorting out ore; the ore continues on to the ore bins, is crushed in the stamps; the slimes are taken out and assorted, and what there is of a certain size runs over the concentrators, and the apportioning of ores is made there; then the tailings from these tables, that is, the course part of the pulp, goes into the Chilean mills there, and it is ground up to a sheer fineness, and the                is retreated below, and goes from the plates to the final tables, there taking out the concentrates.

Q. Does the installation of the Chilean mills and their grinding apparatus increase the stamps very much?

A. That works it up to 20 tons per stamp per day.

Q. About 12,000 tons per day? [322—172]



(Testimony of F. W. Bradley.)

A. 12,000 tons per day; yes.

Q. Now, so that the Court may understand the capacity of such a plant, I wish you would explain, with reference to other milling plants, how large that plant is—such a plant.

A. Would be a little more than twice the capacity of the Douglas Island milling plant.

Q. That is, the Treadwell plant?     A. Yes.

Q. Which are now considered to be among the largest in the world?     A. Yes.

Q. Now, you are familiar with the quantity of water that has been diverted from Gold Creek, are you?     A. I am.

Q. And conveyed to the milling plant?

A. I am.

Q. Do you know when the water was first applied at the milling plant—you were not here when the water was first applied to the Gold Creek compressor, were you?     A. I was not.

Q. Were you here when the water was first applied to the milling plant?     A. Yes, sir.

Q. In the spring of what year?     A. Last year.

Q. Spring of 1913?

A. Yes,—I mean a year ago—in the spring of 1913.

Q. Now, explain to the Court, Mr. Bradley, the necessity for the quantity of water diverted in connection with your operations—whether you need all the water diverted or only part of it?

A. In the course of crushing that has been described, the [323—173] amount of battery and wash water is 15 tons of water per ton of ore; the

(Testimony of F. W. Bradley.)

flume has a carrying capacity of 48 cubic feet per second; that will yield 11 tons of water per ton of ore, and in the final capacity of the milling plant the flume will not carry sufficient water, and we will have to repump a certain amount of water in certain parts of the mill.

Q. That only includes water for battery and concentrating purposes, and other like purposes, exclusive of power?

A. It is simply for the milling of the ore—crushing and concentrating.

Q. And does not take into consideration power that may have to be secured elsewhere?

A. That will have to be gotten from some other source.

Q. How far has your construction work progressed at present, Mr. Bradley?

A. We have 40 stamps completed and in operation, and 10 more building; we have one Chilean mill in operation, and three more on the way.

Q. Now, as to the development work, driving tunnels, and so forth?

A. That work has been pushed with all possible expedition; we are working all the men and machine drills that we have working faces for, and we have on the way a 40-drill compressor which will be set up by the time more faces are available.

Q. From what time has the work been pushed as fast as it could be—from the commencement of it?

A. I paid the bills right along, and I know there has been a constant expenditure of money, and con-

(Testimony of F. W. Bradley.)

stant work going on all the time.

Q. From August 1, 1910? A. Yes, sir.

Q. Now, what has been done since August 1, 1910, towards carrying [324—174] out the plans—what tunnels have been driven, and so forth, as far as your knowledge goes—you have examined the property lately, haven't you?

A. Yes; I have gone through it.

Q. You have been here every year, every summer, since 1910? A. Since 1900; yes.

Q. Now, just what has been done since August 1, 1910?

A. The Gold Creek tunnel has been driven a distance of 6500 feet, and an upraise to the surface some 800 feet in length has been put in at the end of it; three different tunnels have been run for both the flume and tram; the flume line and tram line are practically completed; and the milling plant that has already been described is under way.

Q. Have other buildings been built for use in connection with your completed milling plant?

A. Yes; wharf, warehouse, change-house, blacksmith-shop, compressor buildings—whatever is necessary in the way of accessories have been built, and anything else that is needed is also being prepared for.

Q. These accessories, Mr. Bradley, are they on the scale of a 40- or 50-stamp mill, or on the scale of the large milling plant?

A. Everything is going in on a comprehensive

(Testimony of F. W. Bradley.)

plan; everything is being added to as it can be utilized.

Q. This plant that is now so far under completion and operation, what is the purpose of its completion?

A. Well, it has helped pay expenses; in a certain sense it is what is called the pilot mill; if we are making any mistakes we will know about it before there is more money expended in the same way; the 150 stamps are to be added to this mill.

Q. This is a part of the first unit?

A. This is part of the first unit. [325—175]

Q. This is built so that when the first unit is completed, this will form a part of it? A. Yes.

Q. It is not an independent mill by itself?

A. No.

Q. What are your future plans, Mr. Bradley, with reference to carrying out the scheme you have been working on—what I mean to ask you is whether you intend to continue it with all possible diligence, or whether you intend to delay construction?

A. No; it is the intention to continue with all possible diligence.

Q. And you will so continue until the entire 12,000 ton milling plant is completed? A. Yes.

Q. I wish you would describe to the Court a little more in detail the manner of getting the ore to the mill, the route that has to be followed, the character of ground along which it is built, so the Court will have a better idea of the immensity of the work and the length of time it will require to carry out such an enterprise?



(Testimony of F. W. Bradley.)

A. We are spending now about \$50,000.00 a month, and that expenditure will have to continue for the next eight months before the present mill with the Chileans mills that are being added, will be completely supplied with ore; that is in the development of the mines.

Q. That is not what I have reference to, Mr. Bradley; what I mean is the method of conveying the ore—

A. I am coming to that part of it; this expenditure contemplates a shorter line of haul than over the present tram route; the approximate tonnage over the present tram is [326—176] 600 tons, and so in getting more tonnage we have to get it either by double track in the tunnel or running a sea level tunnel; a sea level tunnel is contemplated for that purpose, and work on that has been started and will be continued, but there is no necessity to rush it, because the mine can only be opened up as fast as places can be made open for working the machine drills, and so it will require several years to work it up to 6000 tons per day capacity, and several years after that to work up the ultimate capacity.

Q. Now, what I want is this, Mr. Bradley: I want you to explain the route through the Gold Creek tunnel along the hillside and through the number 3 tunnel to the mill—the character of the tramway, the length of it and the route.

A. The Gold Creek tunnel is 6500 feet long, and that is laid with 40-pound rails; leaving the Gold Creek tunnel the tramway is built on trestle work, and about 900 feet on this trestle work we will reach

(Testimony of F. W. Bradley.)

what is called the passing track; that passing track will be the mine working camp; that is, where the compressor building is, and also where the machine drills will be repaired, steel sharpened and all machine work done of that character; then the work proceeds through what is called No. 1 tunnel; then follows some more trestle work; then No. 2 tunnel; then it enters No. 3 tunnel, the tunnel that goes under the ridge of Mt. Roberts; that is some 2400 feet long; the total feet of haulage is about 13,000 feet.

Q. Is there any haulage done over a track, and by means of what sort of locomotion?

A. At present a storage locomotive for the development, and two gasoline locomotives for the outside work. [327—177]

Q. Now, the water flume extends along this same route for some distance, and how does it reach the point of use?

A. It goes through a tunnel underneath Snow Slide Gulch, and it follows the line of the tramway except that at No. 1 tunnel it goes outside, and it does the same thing in No. 2 tunnel, and in No. 3 tunnel the flume goes underneath the tram.

Q. Are you familiar with Gold Creek in the vicinity of the Alaska-Juneau dam?

A. Yes, sir; I am.

Q. And with the character of the ground in and about the vicinity of Snow Slide Gulch?

A. Yes.

Q. Were you familiar with that in August of 1910?

A. Yes; and immediately prior to that time.

(Testimony of F. W. Bradley.)

Q. You are a mining engineer and familiar with mine construction?     A. I am.

Q. I will ask you whether flume construction could be carried on there—the work on the flume grade until trails and roads had been built for men to go up on the grade, to be used in connection with the hauling of lumber and supplies?

A. The preparatory work mentioned had to be done before the real work of building a flume could be begun; there had to be a place graded off for the flume, and the lumber had to be delivered along the line of the flume.

Q. Trails had to be built in order to reach the place of work?     A. Yes.

Q. Were there any accommodations there for men until the Alaska-Juneau bunk-house was built?

A. No.

Q. What was necessary in that direction before a large crew of men could be placed upon the ground?  
[328—178]

A. There would have to be some place for them to have headquarters.

Q. Do you know what the Alaska-Juneau Company did in that direction?

A. Yes; they built a cabin.

Q. Built a small bunk-house?     A. Yes.

Q. Now, Judge Winn has asked about some plats that were posted around town at some time a year or so ago—were there ever any plats posted about town for the purpose of selling stock of the Alaska-Juneau Company?     A. No.

(Testimony of F. W. Bradley.)

Q. Was there ever any stock of the Alaska-Juneau Company offered for sale?     A. No.

Mr. HELLENTHAL.—You may cross-examine.  
Cross-examination.

(By Judge WINN.)

Q. You came up here, I think, in 1910—on July the 18th, didn't you, Mr. Bradley?     A. Yes.

Q. Now, I wish you would state, Mr. Bradley, briefly what, if anything, was done looking towards the opening up, developing and mining of this property prior to the year 1910 on any of the plans or schemes that you had contemplated to open it up on before running this Gold Creek tunnel?

A. The work of endeavoring to prove the value of the property and determine whether it was worth working on a large scale or not.

Q. Where was that work confined, to what part of your property, [329—179] and I wish you would indicate it by referring to your Exhibit No. 1 here, and state briefly what had been done prior to the year of 1910?

A. Referring to Exhibit 1, there had been two cross cut tunnels and other cross cut tunnels run in the vicinity of the word "Mine Workings"; and in order to provide facilities for working the ore in case it was encountered in large quantities, we had to make provision for an outlet to Gold Creek at the junction of Gold Creek with Snow Slide Gulch, on the line marked "Gold Creek Tunnel" on the map; and there was also provision made for an outlet to bring the ore to Gastineau Channel.



(Testimony of F. W. Bradley.)

Q. I didn't intend to incorporate in this question what you contemplated to do, Mr. Bradley, but what did you do in the way of development, and so forth?

A. I will eliminate the word contemplate—that is what we did do.

Q. That is what you did do?      A. Yes.

Q. Now, this sea-level tunnel that you have marked here "Proposed Extension" on this exhibit, when did you conceive the idea of running that tunnel?

A. That was in 1913; that was in connection with the present milling plant, and the object of having the tunnel, the sea-level tunnel, changed from the original position which is shown by the line of claims to the right-hand side of the line called "Proposed Extension" was for the purpose of bringing the ore out of the sea-level tunnel nearer to the milling plant.

Q. What, if anything, did you do, Mr. Bradley, about running any tunnel along the series of claims that were taken up in this [330—180] long rectangular figure just to the east of the sea level tunnel as marked in this exhibit?

A. A tunnel was started on those claims and sufficient work was done on it to answer for assessment work, and also to answer for the required amount of work in order to secure a patent, a patent on that group of claims; the tunnel also did assessment work for other claims besides that special group.

Q. Was that tunnel run for the sole purpose of doing the assessment work, or was it the commencement of some plan to open up the property at that time?

(Testimony of F. W. Bradley.)

A. That was one of the different ideas of opening up the property.

Q. At that time where did you contemplate building your mill if you had carried out your project?

A. It would have been immediately in front of that long rectangular piece of ground referred to on Gastineau Channel.

Q. That is about how much farther down Gastineau Channel than where you have commenced the building of your mill now—that is, approximately, Mr. Bradley?     A. About 1500 feet.

Q. When did you cease work, if you remember, on that tunnel?

A. When we got the ground patented.

Q. When was that?     A. About 1905.

Q. Now, you stated something about, Mr. Bradley, in 1899 that some locations had been made toward carrying out some plan of opening up this property—what locations did you have reference to?

A. I have reference to the Colorado, the Wyoming, the Maryland, the Oregon, the Nevada, the Idaho Placer, and others in the [331—181] neighborhood of the junction of Snow Slide Gulch with Gold Creek.

Q. You mean the Oregon you speak of first is the location made by Corbus in 1899?     A. Yes.

Q. Now, when you got up here in the spring, or in the month of July, 1910, you found out that the assessment work had not been kept up, didn't you, on the Corbus Oregon claim?

(Testimony of F. W. Bradley.)

A. That was probably discovered; yes.

Q. Do you remember, Mr. Bradley, when you were testifying in the Basin case that you testified that you discovered that when you came up here in July, 1910?

A. I might have done so; yes.

Q. Now, when you came up here in July, 1910, had the Oregon claim been located—the one that was located by Datson, do you remember?

A. I don't remember, but if it had been located before July, 1910, this reference to my testifying about having discovered there had been no assessment work done would not apply, and the chances are I gave no such testimony.

Q. Now, let's see—I have here Volume 4 of Case No. 2155 of the Circuit Court of Appeals—just one of the volumes of the printed record of that case containing the testimony that was given upon the trial in this court. I will ask you if you remember of testifying as follows—Page 1139—in speaking about the location: “Q. Have you stated everything you said to Mr. Kinzie about making these locations in 1910? A. I have. Q. You directed him to go upon Gold Creek and make a location of water at what point? A. At a point that would fit in with our operations. Q. You didn't care where he located that water, whether it [332—182] was on a patented claim or unpatented claim? A. Yes, I did. Q. What particular claim did you expect Kinzie to go up there and make your water location on? A. I didn't instruct him as to what claim to make it on. Q. What claims did you have in your mind that your

(Testimony of F. W. Bradley.)

company had on Gold Creek at that time? A. The Oregon claim, the old Oregon claim under the Corbus location. Q. You didn't know at that time that there had not been a lick of work done on the Corbus claim since 1905, did you? A. I didn't know it until afterwards"—did you answer those questions that way?

A. Yes, I probably did.

Q. "Q. Did you know it before you left here in the summer of 1910? A. I knew it before I left here; yes"—you answered that question that way?

A. Yes.

Q. Then you did know before you left here that the assessment work had not been kept up on the old Oregon claim?

A. Yes; that is not inconsistent with anything that I stated here on the stand.

Q. I am trying to get the facts—did you give Kinzie any instructions about locating the New Oregon claim, under Datson?

A. That would depend on the date of location; if it was located before I got here, probably not.

Q. I am asking you about your memory, Mr. Bradley; I read over some portions of your testimony to refresh your memory—do you remember whether or not you did give Kinzie any instructions about locating the new Oregon claim?

A. I don't remember as to that.

Q. Now, when was it that you and Mr. Kinzie talked over or had [333—183] any plan decided upon in the way of opening up these properties on the various schemes which you have spoken about—



(Testimony of F. W. Bradley.)

when was the first time, I mean, Mr. Bradley?

A. Why, that was always a live subject, Judge Winn; we talked it over every time I was up here in the summer, and it was also followed along by correspondence.

Q. You knew Mr. Kinzie before he came up here, didn't you? A. Yes.

Q. He had been working with you or for you before he came here? A. He had.

Q. Mr. Kinzie spoke about first learning of some plan of opening up this property, which had originated with you, by reason of some report that you delivered to Mr. Kinzie—a particular report before or about the time he came up here, designating the plans under which you intended to open up this property?

A. Whatever it was termed would have been in the office files.

Q. And when you came up here in July, 1910, you left here on August 1st?

A. Either the first or the second.

Q. Did you come up on the same steamer with Bent and the people who came here about that time and who were connected with the Ebner property?

A. No.

Q. That is, the Ebner Gold Mining Company's property—were they here when you got here?

A. No.

Q. Do you remember about what time they arrived here, Mr. Bradley?

A. Before I left [334—184]

(Testimony of F. W. Bradley.)

Q. That is, before you left to go south?

A. Yes.

Q. The exact date you don't remember?      A. No.

Q. You knew what mission they were coming out here on, didn't you, before they came here?

A. No.

Q. Didn't you hear of them through the newspapers?      A. No.

Q. You did know what mission they were on when they came here, however, didn't you?      A. No.

Q. Didn't you state before, Mr. Bradley, in Cause 2155 of the Circuit Court of Appeals, the Basin case, that you had noticed through the newspaper of the mission that they were coming here on?

A. No; I don't remember of so testifying.

Q. Well, didn't you testify in that case that you knew they came here in connection with this Ebner property?      A. I knew it after they were here.

Q. You don't remember the date of their arrival?

A. No.

Q. It was before the 1st of August, though?

A. They arrived before I left, and I left the 1st of August.

Q. Were you up on this property at any time during your trip here at that time when the Bent party was up there?

A. I might have been, I don't remember.

Q. Do you remember of seeing them up there at any time?

A. No; I am pretty sure I didn't see them up there.

(Testimony of F. W. Bradley.)

Q. You knew they were going back and forth from Juneau up there right along, didn't you, while you were here—a part of the [335—185] time?

A. I must have known it; yes.

Q. Now, Mr. Bradley, have you ever measured with any certainty the capacity of your present flume extending from your mill on the beach back up Gold Creek to the dam?     A. Yes.

Q. How did you take that measurement?

A. I dropped the tape in and timed it and determined the velocity; I knew the square section of the flume.

Q. Is that a good way to ascertain the amount of water in a flume?

A. That is a good way of guessing at it; yes.

Q. When you say guessing, it is a pretty hard thing to guess at, isn't it?

A. It can be done with a very fine instrument, but that is one way of determining its velocity.

Q. That is a practical way, is it?     A. Yes.

Q. Where did you make this experiment on your flume?

A. Between the mouth of the Gold Creek tunnel and the passing track.

Q. The passing track?

A. The passing track, the place where the passing track now is.

Q. How far is that down towards Juneau?

A. From the mouth of the Gold Creek tunnel?

Q. Yes.     A. About 900 feet.

Q. At what point?

(Testimony of F. W. Bradley.)

A. It is between the Gold Creek tunnel and a point 900 feet this side of the mouth.

Q. Could you designate more definitely the place, Mr. Bradley?

A. It was cut through a rocky point. [336—186]

Q. It was cut through a what?

A. Rocky point.

Q. Is it the first cut through a rocky point after you leave the mouth of the Gold Creek tunnel coming towards Juneau? A. Yes.

Q. That is where you made the measurement?

A. Yes.

Q. When did you make that, Mr. Bradley?

A. Oh, probably last year or the year before.

Q. You made it while your flume was the same size as it is now? A. Yes.

Q. Has it always been the same size along there?

A. Yes.

Q. Never been altered since it was first constructed? A. No.

Q. In this computation you measured the number of cubic feet or miner's inches—which did you measure?

A. It could be converted into miner's inches; the flume carries about 2,000 miner's inches.

Q. The flume carries 2,000 miner's inches?

A. Yes.

Q. This side of that point where you measured it, Mr. Bradley, are there any other intakes—that is, has your flume any other intakes of water coming down from the hillside—the small streams?



(Testimony of F. W. Bradley.)

A. Yes, a number.

Q. Then, your flume this side of the point where you made the measurement is somewhat larger than it is back up the creek from the point where you made the measurement?      A. The same size.

Q. The same size all the way down to your mill?  
[337—187]

A. Except in number 3 tunnel and the north portal of No. 3 tunnel.

Q. Then, after it leaves the tunnel, and between the tunnel and your mill, it is the same size as it is from the Gold Creek tunnel down to the point where you made the measurement?

A. Generally speaking it is the same size; there may be a little variation, but the carrying capacity I have intended to be the same throughout.

Q. What amount of water do you estimate that you take in from other streams than Gold Creek into your flume?

A. Well, it depends on what water there is at the time; if the flume is full of water from Gold Creek, the water from the side streams is wasted.

Q. Have you ever made an estimation as to what amount of water you could derive from those streams, other than Gold Creek?

A. Yes; I know in the winter time we couldn't get any.

Q. In the winter time you couldn't get much out of Gold Creek, could you?

A. We could get some; yes.

Q. Have you ever experimented sufficiently, Mr.

(Testimony of F. W. Bradley.)

Bradley, to tell how long about on an average each year you could get water enough out of Gold Creek to fill your flume to its capacity of about 2,000 miner's inches?

A. I think some seasons it would last for seven months, and other seasons it might not last longer than five months—that is, to fill the flume to its full capacity without interfering with the prior rights lower down on the creek.

Q. This flume of yours, where it diverges from Gold Creek—no, I will not say where it diverges from Gold Creek, but from the dam which your company has constructed on Gold Creek, [338—188] about what distance down the creek is it to the mouth of the creek?

A. From that point to the mouth of the creek, I guess, is two miles.

Q. Then, your diversion of the water from the Gold Creek dam of your company would, when there was no more water in Gold Creek than to fill your flume to its capacity, leaves the remaining part of Gold Creek dry down to its mouth, except what water came into Gold Creek between its mouth and your dam?

A. If all the water flowing in Gold Creek was taken out by our flume, all the water that would be below our flume would be what would come in from the side streams.

Q. Now, leaving out the question, Mr. Bradley, that you might deprive somebody else of some water that has the same rights, between your dam and the

(Testimony of F. W. Bradley.)

mouth of the creek how many months out of the year do you think Gold Creek would supply your flume to its full capacity, 2,000 miner's inches?

A. Gold Creek can supply everybody for five months in each year.

Q. Now, singling out yourselves alone and taking it for granted you are getting the full capacity of your flume, how long do you think that could be supplied, leaving out the question of any other water rights whatever?

A. In favorable seasons, as I said before, I think we could have seven months of full capacity, and full capacity for other people.

Q. Then, you think there would be five months out of the year that all parties who may have water rights could be supplied to the full extent that they have appropriated at the present time?

A. The records all show that the longest floods do last for about five months, each year, and during that five months there would be ample water for everybody. [339—139]

Q. Now, then, Mr. Bradley, there must be more water going into your flume from your intake on Gold Creek than 2,000 miner's inches, isn't there?

A. Probably at the head, yes; that is on a steep grade and has a greater carrying capacity than the point where I measured it.

Q. The water, then, that you have been using for some months past in the mill, and the overflow which is indicated on Defendant's Exhibit "A" for identi-

(Testimony of F. W. Bradley.)

fication, is more water than 2,000 miner's inches, isn't it?

A. No; that is about the limit of the carrying capacity of the flume, Judge.

Q. Is it? A. Yes; the way I measured it.

Q. Then, there must be some considerable overflow in you flume at different points by reason of this additional water that is coming in other than the Gold Creek water, isn't there?

A. The head of the flume down to the little compressor that was used for running the Gold Creek tunnel, that portion of the flume carries much more water than the portion from the mouth of Gold Creek tunnel to the mill site, and when the said streams are in flood we have got them all turned into the flume, in order to hold our right to them; we have been allowing them to run into the flume and then to go out again.

Q. So I understand you to say, Mr. Bradley, that the flume between the Gold Creek tunnel and the dam is of greater carrying capacity than it is from the Gold Creek tunnel down to where you made your measurement?

A. Yes, that portion of it is on a steeper grade than the balance of the tunnel, although it is the same size flume. [340—190]

Q. At the present time since you have commenced operating the new mill, you have been hauling all grades of ore from the new Gold Creek tunnel down to your new mill—now, what distance is that, did you say, Mr. Bradley?



(Testimony of F. W. Bradley.)

A. From the mouth of Gold Creek tunnel to the new mill?

Q. Yes.      A. About 6,500 feet.

Q. Is that following the line of your railroad track?      A. Yes.

Q. And on a straight line it would be decreased—you make some considerable curves, don't you?

A. Yes.

Q. Now, talking about those little streams, Mr. Bradley, that feed your flume line other than Gold Creek—about what length of time during each season do you get any water from that source?

A. Oh, I presume they would be in flood for five months, whatever their full capacity is, I don't know that; I have never had occasion to determine that.

Q. Well, how long during the season do those streams furnish or feed your flume with any water?

A. Why, of course, it would be five months.

Q. You don't think you could get any water from that source any more than five months out of the year?

A. Not to speak of; there might be just a little rivulet.

Q. What are those streams called, Mr. Bradley, that you get the water from?

A. I think they are called Wood's Gulch or Wood's Ravine, and branches of it.

Q. You don't have any idea how much water you get from that source, say for about five months out of the year?

A. I presume for five months in the year all that

(Testimony of F. W. Bradley.)

we get from [341—191] the other streams might fill one-fourth of the capacity of the flume—that is a rough estimate.

Q. Wood's Gulch stream is quite a stream for some portions of the year, isn't it?

A. Yes; that gets in flood sometimes, but I noticed since I have been here this year that one of the branches dries up very quickly.

Q. What branch?

A. That is one at the north portal of our No. 3 tunnel.

Q. At your No. 3 tunnel? A. Yes.

Q. Are those the only streams that could be of any advantage in feeding your flume?

A. The Snow Slide Gulch, there is some water in that.

Q. Quite a little bit of water in that at certain seasons of the year, isn't there?

A. Yes; when the snow is melting.

Q. For about how long each year do you get any water out of that?

A. I think the five months flood period applies to that too.

Q. Do you know about how much water you get from that source?

A. I think it is—well, half of what Wood's Gulch gives.

Q. About what portion, say during five months out of the year, would that go towards filling your flume?

A. That would come in with the bunch of side

(Testimony of F. W. Bradley.)

streams; and the whole bunch of side streams might possibly fill it to one-quarter capacity during five months of the year.

Q. Don't you think there is more water than that?

A. Five months is a long time, Judge.

Q. On some days there is more than that, isn't there?

A. On some warm days when the snow is melting, yes. [342—192]

Q. But you were taking an average when you were testifying a while ago? A. Yes.

Q. Prior to the year 1910, Mr. Bradley, what work, if any, to your knowledge had been done on the Colorado claim and in or on the Oregon claim?

A. There had been sufficient work done to patent the group.

Q. You didn't patent the Oregon, did you?

A. No.

Q. The work that had been done prior to 1910 was simply work sufficient for the patenting of the group of what claims?

A. Well, there was the Colorado, Nevada, Maryland I think in the group that was patented.

Q. What did that work consist of, Mr. Bradley?

A. Tunneling work.

Q. Done on each claim or on some particular claim?

A. No; I think it was done practically at one point.

Q. What point was that, do you know?

A. Near where the Gold Creek tunnel starts.

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Appellant,

vs.

EBNER GOLD MINING COMPANY, a Corporation, THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, ANGUS MACKEY, as Receiver for THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, and DOWNIE D. MUIR,

Appellees.

---

Transcript of Record.

---

VOLUME II.

(Pages 385 to 800, Inclusive.)

---

Upon Appeal from the United States District Court for the  
District of Alaska, Division No. 1.

Filed

JUL 1 - 1916

F. D. Monckton,





United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Appellant,

vs.

EBNER GOLD MINING COMPANY, a Corporation, THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, ANGUS MACKEY, as Receiver for THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, and DOWNIE D. MUIR,

Appellees.

---

Transcript of Record.

---

VOLUME II.

(Pages 385 to 800, Inclusive.)

---

Upon Appeal from the United States District Court for the  
District of Alaska, Division No. 1.

---



(Testimony of F. W. Bradley.)

Q. Did you run a tunnel there?

A. That was in line with the general idea of getting an entrance from Gold Creek, the same idea that resulted in having the work done on the Summit and the Idaho that has been referred to on Plaintiff's Exhibit No. 1.

Q. Do you want it understood that that work that you did prior to 1910 was looking towards the opening up of the property on the same plan as you are now opening it up on?

A. That is the same idea; yes.

Q. And the last work that was done on that was in 1904, wasn't it—you patented the Colorado claim in 1904, didn't you?

A. Or 1905, somewhere around there.

Q. That was the last work that was done in that vicinity? [343—193].

A. That I remember of; yes.

Q. How far is that tunnel from the point where your dam is now constructed?

A. About a thousand feet.

Q. The dam is about a thousand feet further up the creek? A. Yes.

Judge WINN.—That is all.

Mr. HELLENTHAL.—I just want to ask Mr. Bradley a question on direct examination, which I forgot.

Q. Mr. Bradley, do you know what use the water is being put to at the present time? A. Yes.

Q. Is all the water diverted by you from Gold Creek being used in connection with your mining and



(Testimony of F. W. Bradley.)

milling operations now carried on?      A. Yes.

Q. Is any part of it wasted or allowed to go to waste?      A. No.

Q. Has there been any time since the water was first diverted, or since the water was first applied in November, 1910, that the water has not been continuously used to the full capacity of your flume?

A. I do not know.

Q. You have been in San Francisco most of the time?      A. Yes.

Q. When you have been here during the summer seasons has the water been continuously used?

A. It has been.

Q. You testified in response to Judge Winn's question that the carrying capacity of your flume, owing to the steepness of the grade between site of the compressor and the intake, [344—194] was larger than the carrying capacity from the compressor down to the mill site?      A. Yes.

Q. That is to supply water to the Gold Creek compressor?      A. It is.

Q. The surplus water carried between the Gold Creek compressor and the intake is *to used* at the compressor for jacket water and such other purposes—is that right?      A. Yes.

Mr. HELLENTHAL.—That's all.

Recross-examination.

(By Judge WINN.)

Q. You heard, Mr. Bradley, testimony here by Mr. Kinzie that it wasn't your intention to go ahead and use that compressor at the mouth of Gold Creek tun-

(Testimony of F. W. Bradley.)

nel any longer, didn't you?

A. We are keeping it there as a stand-by compressors?

Q. You heard his testimony this morning—he stated this, didn't he—that it would take all of the water of the flume to run it and they had concluded to abandon that and put in another compressor, and expected still to put in another compressor run by electricity?

A. He said something like that at that time, but you misconstrued it; he didn't say he had abandoned that compressor; he did say we have put in a larger compressor, but we intend to keep the other as a stand by in case of accident.

Q. Yes, and when you were running that you wouldn't have any water down here for milling purposes, would you?

A. We would only use it for milling purposes at the lower end of the flume.

Q. Don't you know that that air compressor, Mr. Bradley, is [345—195] put in at the portal of the Gold Creek tunnel and is only a temporary matter?

A. No; that is a good permanent job.

Q. Well, did you hear Mr. Kinzie's testimony in the case of the Alaska Gastineau Company against the Alaska Juneau Company over the Sheep Creek water right? A. No; I wasn't here.

Q. Or the Alaska Treadwell Gold Mining Company against the Alaska Gastineau Company?

A. No.

Q. If he testified in that case that that was only

(Testimony of F. W. Bradley.)

a temporary matter, do you wish to say now it is a permanent one?

A. It was admitted as far as the use of it is concerned, but I say the job is a good firm job; that doesn't say that the use is any more than temporary for the use of the Gold Creek tunnel, but the compressor is in there, and in there to stay.

Q. I was not belittling the job as not being a good one, but do you expect, Mr. Bradley, to keep in that compressor, and then keep in that compressor you have at the mouth of Gold Creek tunnel, and then that missing compressor that Mr. Kinzie testified to—all three of them?

A. Why, yes; it wouldn't be too much to keep all of them.

Q. When do you figure the mine would reach the capacity when you would want to use all of those compressors?

A. It is going to be a great many years, but there have to be a great many drills put to work up there.

Q. Then you are going to use all three of those compressors?

A. I hope we will never want to use the one at the mouth of Gold Creek tunnel, because it is insufficient.

Q. You stated to Mr. Hellenthal that all the water that came from your flume came from Gold Creek—what becomes of the [346—196] side water that feeds your flume? A. It goes in and goes out.

Q. Then it goes to waste?

A. The side streams go to waste—that is, they go

(Testimony of F. W. Bradley.)

to waste when the Gold Creek flume is full.

Q. Now, when you get through with the water down here at your mill, it is dumped out into the Gastineau Channel, isn't it?     A. Yes.

Judge WINN.—That is all.

Mr. HELLENTHAL.—Just one question that I neglected to ask, Mr. Bradley. When is it that the side streams that you have been testifying about are in flood with reference to the time when Gold Creek is in flood?

A. They are all in flood at the same time.

Q. So that when the side streams are in flood there is an excess of water for everybody in Gold Creek?

A. There is; yes.

Judge WINN.—With your present arrangements, all the water you use on your compressor goes to waste down the creek—it doesn't go back down to your mill, does it?

A. There is an excess at the lower end of the flume, and that excess can be used on the compressor.

Judge WINN.—That's all.

(WITNESS EXCUSED.)     [347—197]

The plaintiff, to further maintain the issues on its part, introduced as a witness, O. M. HARRI, who, being then duly sworn to tell the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of O. M. Harri, for Plaintiff.**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is O. M. Harri?     A. Yes.



(Testimony of O. M. Harri.)

Q. Where do you reside, Mr. Harri?

A. Haines.

Q. Haines, Alaska?      A. Yes.

Q. You have resided in Juneau?      A. Yes.

Q. And vicinity?      A. Yes.

Q. You know the Alaska-Juneau Gold Mining Company?      A. I do.

Q. You know where the properties of the Alaska-Juneau Gold Mining Company are, in a general way?      A. Yes.

Q. Were you acquainted with these properties in the year 1910?      A. Yes, sir.

Q. In August of that year?      A. Yes, sir.

Q. Were you in the employ of that company during that year?      A. Not all the time.

Q. At what time were you employed, if at all?

A. Well, I don't know; I was employed part of the year that time, and part of the time I laid off.

Q. When were you first hired, Mr. Harri?

A. In that year? [348—198]

Q. Yes, by the Alaska-Juneau Company—not by the Treadwell Company, but by the Alaska-Juneau Company.      A. On August 1st, 1910.

Q. Your employment commenced on August 1st, 1910?      A. Yes, sir.

Q. What were you employed to do, if anything?

A. I was employed to go up to Snow Slide gulch and build a bunk-house there, look over the claims in general, and other work.

Q. Were you to do anything except build a house—anything in the way of building trails?

(Testimony of O. M. Harri.)

(Not answered because of objection.)

Q. State in detail what you were employed to do, Mr. Harri.

A. I was employed to build trails, look after the building of that house, clean off a place for a dam, see if there was any assessment work done on some claims up there, and anything in general leading up to the work they wanted to do there.

Q. Well, now, what was that work connected with?

A. It was connected with taking the water from Gold Creek.

Q. That was the purpose of the work?

A. Yes, sir.

Q. When did you go upon the ground, Mr. Harri, to commence this work?     A. August 1st, 1910.

Q. Where did you go on August 1st, 1910?

A. I went up on what is known as the Oregon Claim.

Q. What did you do on that day?

A. I brushed off a place for a cabin and cut some trails.

Q. What else did you do?     A. Nothing.

Q. Did you do anything in the way of looking over the ground where there had been assessment work done? [349—199]     A. Yes.

Q. But in connection with the water appropriation, that was all you did?     A. That is all.

Q. I meant to ask the question this way, Mr. Harri—what did you do that day looking toward the appropriation of water, if anything?

(Not answered because of objection.)

(Testimony of O. M. Harri.)

Q. Do you know what you went up there for, Mr. Harri?     A. I was told what for.

Q. What did you go up there for?

(Not answered because of objection.)

Q. What was your purpose in going to work up there?

(Not answered because of objection.)

Q. What did you do first, Mr. Harri?

A. I think the first thing I done was to look the ground over to see if there was any assessment work done.

Q. What was the next thing you did?

A. The next thing was to clean off a place to build a bunk-house.

Q. What was the next thing?

A. The next thing was to make a piece of trail out to the water break, as you call it, to keep the water away.

Q. Where was that trail built?

A. Up the creek from the cabin.

Q. What was your object in building that trail?

(Not answered because of objection.)

Q. Who told you to build the trail?

A. Mr. Kinzie.

Q. For whom were you building that trail?

A. The Alaska-Juneau Gold Mining Company.

Q. What was it to be used for—that trail that you were building there?

A. For myself and others to go to work over.

[350—200]

Q. To work where?     A. On the flume line.

(Testimony of O. M. Harri.)

Q. What flume line do you refer to—what was it to be used for?

A. Used for taking the water out of Gold Creek.

Q. What is the character of the country at that point, Mr. Harri—the topography in that neighborhood in Gold Creek Canyon—what is the character of the country about there as to being brushy or precipitous or otherwise?

A. Right above the cabin it is right up and down, rocky cliff; right above that we had to blast—above the cliff there is a rim of rock,—to go past over the rock to get into the Borean pit; then to get into the place where the dam is now, running by the side of the creek it is covered with heavy brush.

Q. Do you know where the Alaska-Juneau dam and flume now are? A. Yes, sir.

Q. How is the country there with reference to those points being accessible without the construction of trails and roads? A. Not accessible.

Q. This trail was built to make them accessible? A. Yes.

Q. Now, that is what you did on the first of August, 1910? A. Yes, sir.

Q. What did you do on the evening of the 1st?

A. On the evening of the first I came back to town and went over to Treadwell.

Q. What did you do on the 2d of August?

A. The 2d myself and another man cut some trails between the Jualpa dam and cabin.

Q. Did you go back on the Oregon claim on the 2d? A. No, sir, I did not.



(Testimony of O. M. Harri.)

Q. Didn't go back on the Oregon claim? [351—  
201] A. No, sir.

Q. You cut a trail between where, did you say?

A. Between the Jualpa dam and the cabin.

Q. Who cut that trail?

A. Myself and a man named Casey, cut part of it that day.

Q. Russell Casey? A. Yes, sir.

The COURT.—What day was that?

Mr. HELLENTHAL.—The 2d of August, 1910.

Q. Who is Mr. Casey?

A. A young man who lives here in town.

Q. By whom was he employed?

A. Employed by myself.

Q. To go to work for whom?

A. For the Alaska-Juneau Gold Mining Company.

Q. And the work done by him was as an employee of that company under you? A. Yes, sir.

Q. Now, where is that trail situated that you worked on on the 2d of August?

A. It is situated between the Jualpa dam and the bunk-house which was built there.

Q. Where is the Jualpa dam, Mr. Harri?

A. By measurement it is 1,000 feet down the creek from the cabin I had built there—possibly more.

Q. How far could material be delivered—what was the object of building that piece of trail—cutting that trail through there?

A. Well, to pack the lumber over the trail and get it down to where the house was to be built.

Q. When did you work on that trail again?

(Testimony of O. M. Harri.)

A. I didn't work on that trail the next day myself, but I had [352—202] men there working on that trail.

Q. Who did you have working on it the next day?

A. Mr. Casey was one that I am sure of, and there was a couple of Siwashes, and I think Sandy Hilton.

Q. Do you know who those Siwashes are at this time? A. I don't.

Q. Can you describe them?

A. No, except *on* was an old man and the other was a young man, as far as I can remember.

Q. Don't know their names? A. No.

Q. Don't know where they are? A. No, sir.

Q. That was on the 3d of August?

A. On the 3d of August.

Q. Where were you that day?

A. Up the creek from the cabin.

Q. What did you do there?

A. I went up there and put in some sluice boxes and *wash* off some ground, cleaned up some brush, threw some rocks and rubbish in the creek, and continued working on the trail; I think that is all I remember doing that day.

Q. Did you find the Mulligan water notice on the 3d? A. I did.

Q. Where did you find it posted?

A. Up the creek from where the dam is now located.

Q. A short distance? A. A short distance.

Q. That is where the Alaska-Juneau dam is now located? A. Yes, sir.

(Testimony of O. M. Harri.)

Q. Posted on the bank of the creek?

A. Posted on the bank of the creek.

Q. How much time did you put in on the 3d working on these [353—203] trails, and doing similar work?

A. All the time except the time I was down looking after the men on the other trails.

Q. How much time would that include, Mr. Harri—most of the day?      A. Most of the day.

Q. Those trails, for what purpose were they built?

A. Same purpose I started them for.

Q. What was the necessity for those trails that you built on the 3d—in order to make the flume line and dam accessible?

A. So myself and others could get up to where they wanted to work, and get lumber, and so forth there.

Q. The trails were necessary for the men, and to get the material to the place where it was to be used?

A. Yes, sir.

Q. Now, what did you do on the 4th?

A. On the 4th I think I was down where the crew were engaged there packing lumber from Snow Slide gulch over to the cabin.

Q. Now, I will ask you another question, Mr. Harri—how far up could you bring the lumber at that time?

A. Well, we started to make it so you could go on through to Snow Slide gulch, but there was a slide there, and we couldn't fix it—we could only get to the Jualpa dam all the time.

(Testimony of O. M. Harri.)

Q. That is where the trail started when you and Mr. Casey started to work on the 2d? A. Yes, sir.

Q. And on the 4th how far had that trail been completed?

A. Been completed, I think, to Snow Slide gulch.

Q. What use did you put that trail to on the 4th?

A. We packed lumber over there, and slid the lumber the balance of the way down the gulch.  
[354—204]

Q. What if anything, had been delivered there in the way of lumber on the 4th?

A. One load, I think, was delivered there.

Q. How much lumber was used in connection with the construction of this bunk-house?

A. Three loads of lumber.

Q. When were those loads brought up there?

A. On the 4th, 5th and 6th.

Q. The entire consignment had been delivered by the 6th? A. Yes, sir.

Q. What was done with the lumber delivered there?

A. It was used in building the bunk-house.

Q. When was the first lumber taken to the present site of the bunk-house?

A. I think it was on the 5th, or the afternoon of the 4th, I am not sure about that.

Q. Either the afternoon of the 4th or the 5th?

A. Yes.

Q. By what time was the lumber all carried over to the bunk-house? A. The evening of the 6th.

Q. By the evening of the 6th the lumber was all



(Testimony of O. M. Harri.)

carried over to the bunk-house? A. Yes.

Q. How many men did you have employed under you in conveying that lumber over there? A. Six.

Q. Who were they?

A. Sandy Hilton, Mr. Casey, two Siwashes, Mr. Burg and I don't remember the other fellow.

Q. Well, now, to refresh your memory, was Mr. Burg employed to carry the lumber, or to assist the carpenters on the bunk-house? [355—205]

A. Doing both.

Q. Did you have anybody working—any carpenters at work on the construction of the bunkhouse?

A. Yes, sir.

Q. Who was that? A. Mr. Dempsey.

Q. When did he commence work?

A. The morning of the 6th.

Q. During the time that this work was going on of carrying lumber over to the bunkhouse, you didn't carry any lumber yourself? A. No, sir.

Q. On the 4th, 5th and 6th, where were you working?

A. I looked after the men, and was working on trails above the cabin part of the time.

Q. Working each day part of the time on trails above the cabin? A. Yes.

Q. Now, this road that you built, that you and Mr. Casey started—this trail from the Jualpa dam over, what was that to be used for besides carrying the lumber for the bunkhouse—was there any other lumber to go over that trail?

A. Well, I didn't know at that time whether they

(Testimony of O. M. Harri.)

intended to take any lumber over it or not.

Q. Do you know whether they took any lumber over?    A. Not besides that; no, I don't.

Q. Could the lumber for the flume grade or bunk-house be delivered there without first cutting a trail over there, or some similar place?

A. No, they could not.

Q. Now, from that time on, Mr. Harri—from the 1st of August on how long did you work continuously upon or in that vicinity, either building trails or doing other work preliminary [356—206] to and in connection with the appropriation and diversion of that water?

A. I was there from August 1st until the fore part of October.

Q. Were you there continuously all that time?

A. Oh, except what time I would come down on some errand, downtown, connected with that work.

Q. You worked on that job continuously all that time?    A. Yes, all the time I was there.

Q. And what would you say as to the doing of work on the ground each day?

A. There was a part of each day I worked there.

Q. You worked there a part of each day?

A. Yes.

Q. How were you engaged during that period?

A. Improving those trails, cutting steps up the sides of the hill, and doing things like that in general.

Q. Now, what do you say as to other men—when did you have anybody else there that was not work-

(Testimony of O. M. Harri.)

ing on either the trails or other preliminary work, such as cabin building, lumber carrying, and so forth?

A. Some time between the time I had the cabin done and the 1st of September.

Q. What did they do?

A. They went up on the side hill and cleared off a flat place there where one of the tunnels came out and they also cut some steps up the side of the mountain, built a blacksmith-shop, pitched a tent—

Q. That was during the month of August?

A. I think it was, yes.

Q. Now, when did they commence active operations in building the tunnel?

A. Some time after the first of September. [357—207]

Q. It took that length of time to make the ground accessible?

A. I wouldn't say it took all that time, but they made several trips up there working around before they actually started on the tunnel.

Q. What I am talking about, Mr. Harri, is your work. A. My work?

Q. Yes, were you engaged all that time in order to get the ground accessible—up to that time?

A. Yes, sir.

Q. Was any of the work you did unnecessary in that connection?

A. No, I didn't do any unnecessary work.

Q. All the trails that you built. What else did you build besides trails, Mr. Harri—in a general way

(Testimony of O. M. Harri.)

explain it to the Court?

A. I done some grading along the bunk-house, and as I said before cleaned off where the dam is now.

Q. Cut any steps?

A. Cut those steps, and when they started the flume, used to help up on the flume grade.

Q. That was after the men commenced working on the flume? A. Yes, sir.

Q. About what time was that, Mr. Harri?

A. Some time in September.

Mr. HELLENTHAL.—You may cross-examine.  
[358—208]

Cross-examination.

(By Judge WINN.)

Q. There was a man by the name of Summers accompanied you up there in the first instance?

A. Yes, sir.

Q. He went up there to show you where the Old Oregon claim, or some Oregon claim, lay, did he not, Harri?

A. I don't know as he mentioned the name at that time, Mr. Winn, but he showed me where the notice was, where they wanted me to do the work.

Q. Didn't you testify before that he showed you the general extent of the Oregon claim?

A. I think so, yes—I wouldn't be sure about the name.

Q. Then, your first object in going up there, and the first thing you did, was to look over and see whether any assessment work had been done on what claim? A. On the Oregon claim, I think it is.



(Testimony of O. M. Harri.)

Q. The Oregon claim? A. Yes, sir.

Q. Was it the Parish No 2 that they directed your attention to?

A. I don't know where the Parish No. 2 Claim is.

Q. Never had the boundaries of it pointed out to you? A. No, sir.

Q. Now, then, your next object was to build a house, wasn't it, up there for people to live in so they could go to work? A. Yes, sir.

Q. And in order to get a place to build a house you had to cut out some sort of a trail leading from the Jualpa dam up to the place where the house was to be built? A. Yes, sir. [359—209]

Q. And that was naturally the first work you would do, wasn't it? A. Yes, sir.

Q. Now, that trail, then, that you cut out from the Jualpa dam up to a place where the cabin was afterwards constructed was cut out partially over an old road that had been there? A. Yes, sir.

Q. There wasn't much cutting out to do in those places, was there?

A. It was all growed up again and you couldn't pack no lumber out unless it was straightened out and widened.

Q. What size was the brush?

A. All the way from a straw up to a couple of inches.

Q. That had pretty thickly grown up in the road, had it? A. Yes, sir.

Q. How long did it take you to cut that trail out up to the cabin?

(Testimony of O. M. Harri.)

A. Why, I think it was a couple of days, if I remember right, before we had it all completed.

Q. What?

A. We had it first so we could get over it, and then kept improving it as we went along.

A. That was the first work you did?

A. Yes, sir.

Q. You don't just remember the days it took to do that, do you?

A. No, I don't remember exactly the number of days it took to complete it all.

Q. Now, isn't it a fact that you went up there on the first day of August, as you stated, and then came back downtown and didn't go back up there until the 3d?

A. I cut a little piece of trail that day, and cleaned off a little piece at the back of the cabin. [360—210]

Q. On the 1st? A. Yes.

Q. On the 1st you went up there alone? A. Yes.

Q. And you worked some on the trail that led from the Jualpa dam up to the cabin?

A. No, from the cabin up the creek.

Q. From the cabin up the creek? A. Yes.

Q. What was the purpose of that trail from the cabin up the creek?

A. There was some slide rock along there over the Borean dump, and you could hardly walk along unless the trail was fixed.

Q. Was that trail a part of the trail that you went up to the cabin on?

(Testimony of O. M. Harri.)

A. No, that is above the cabin, up the creek from the cabin.

Q. Your shack—did you have a shack up there besides the cabin that was afterwards built? A. No.

Q. You didn't stay up there over night?

A. No, I came downtown every night for quite a little while, until the cabin was completed so I could move into it.

Q. Now, you said a while ago your first object was to build a bunk-house and a trail so you could get the lumber to it. What was your object in going up above the cabin?

A. The way I understand, they were going to start operations right away and wanted me to rush it, and I didn't know what part they were going to start on.

Q. Did Summers point out where you were to commence work?

A. Only about where they were going to start the dam.

Q. You knew it was necessary to have a cabin up there to house the people in, didn't you? [361—211]

A. Yes, sir.

Q. And naturally your object was to get the house built first, was it not? A. Yes, sir.

Q. Well, this trail up above the house wouldn't be any part of the trail that you used to get lumber up to that house? A. It would not.

Q. Now, isn't it a fact that you didn't work on that trail on the 1st day, but your attention was called to the fact that you had to build a house, and you wanted to get a trail from the dam where the lumber

(Testimony of O. M. Harri.)

could be delivered up to the place where the house was to be built—Jualpa dam?

A. I was told they were going to deliver material all along there, and there was a proposition made to slide lumber down Cape Horn across from my cabin.

Q. They intended to slide lumber down Cape Horn—that is pretty near your cabin?

A. Opposite my cabin.

Q. When you say your cabin you mean the first bunk-house built there? A. Yes, sir.

Q. Then, by sliding the lumber down that way you could get it and use it to build your bunk-house?

A. The water was too high at that time, and we couldn't get it across.

Q. Then you had to bring it from the Jualpa dam?

A. Yes, sir.

Q. How far did you say it is from the Jualpa dam up to where you built the cabin?

A. I think it is a thousand feet, possibly more.

Q. Now, isn't it a fact that you were not up there after the first until the 3d—that you came back down-town and didn't go back again until the 3d? [362—212]

A. No, sir; it is not.

Q. You testified, did you not, in the Basin case, when it was up for trial, which was over the Lotta Claim? A. I did.

Q. Now, I want to ask you what you meant by this part of your testimony: "Q. Are you acquainted with the ground in controversy in this suit, being the ground known as the Oregon Claim? A. Yes,



(Testimony of O. M. Harri.)

sir. Q. And the flume line as now constructed by the Alaska-Juneau Gold Mining Company? A. Yes, sir. Q. Just state what you did when you went up there—what did you find there first? A. I went up on August 1st and looked the claim all over as much as I could that day to see if there had been any assessment work done on it and I didn't find any; then I came down to the present location of the cabin, cleaned off some brush there in case I sent someone up there to start the work, so they would know where to start the cabin, and started a short piece of trail up the creek. That was on August 1st. August 3d I went back to the present location of the cabin and up the creek, cut some steps up the bank towards where the present location of the flume is, with a view to getting around up to where the dam now is located, and I started up along that bank and it was too hard for me to get around that way, so I went up on top of the hill over the road and went around south of the present dam site and cut a piece of trail where the dam is now. I went up and put some boards in there to change the water, to wash the gravel off, as I was told to clean out everything there and get everything ready to start the dam at a point lower down, and I went down and cleaned out tree tops and boards and some rocks and threw them into the creek"—did you testify to that on the [363—213] other trial?

A. Yes, sir, I did.

Q. You didn't say anything about building any other trail on the first day you went up there except building a little piece of trail up the creek, did you,

(Testimony of O. M. Harri.)

at that time?     A. I did.

Q. That is what you did on the first day you went up there?     A. The first day and the third.

Q. Now, then, Harri, you didn't say anything in your testimony before about having anybody up there to help you, did you?     A. I don't think I did.

Q. Now, when you went up there on the second day, you say you worked up at where the Lock Mulligan notice was posted?

A. No, not on the second day; the second we worked between the Jualpa dam—myself and Mr. Casey—to where my cabin is built there, what they call the bunk-house—that is the second day.

Q. Then, on the third day you say you went up to where Lock Mulligan had put up a notice?

A. Yes, sir.

Q. You saw a notice there, did you?     A. Yes, sir.

Q. Right at that place you put in some boards and turned the water in for some sluicing on the side of the bank?     A. Yes, sir.

Q. Now, prior to your going up there at this time, you hadn't been working for Mr. Kinzie, had you?

A. I don't remember whether I was or not, Mr. Winn; I think I had been laying off a while at that time; I am not sure about it now.

Q. When did you say you started to build the cabin?  
[364—214]

A. On August 6th.

Q. When did you complete it?

A. Oh, it was along about the middle of the month some time.

(Testimony of O. M. Harri.)

Q. Now, I will ask you, Harri, if you didn't testify on the trial of the case that I have just mentioned, in regard to when you got any men up there to help you, as follows (I refer to page 1012 of Volume 3 of the printed record in case No. 2155 of the Circuit Court of Appeals): This question was asked you: "When did you get men up there to help you?"

A. I got men there on the 6th—I had one man there on the 5th. Q. Month? A. Fifth of August."

Did you testify to that on the other trial?

A. Will you read that a little ways farther?

Q. Down below?

A. A little further than you did read.

Q. I will read the question to you: "Q. When did you get men up there to help you? A. I got men up there on the 6th—I had one man there on the 5th.

Q. Month? A. 5th of August. Q. That was in building the house? A. That was in carrying the lumber down ready for the house on the 5th, and we started the house on the 6th."

A. That was it exactly—that was my testimony.

Q. And you said you didn't get any men up there to help you until the 5th or 6th, did you?

A. I construe that as meaning the building of the house.

Q. But you didn't say a word about anybody helping you on the trails in that other case, did you?

A. No, I wasn't asked, I don't think.

Q. Let's see—on page 1016 you were asked the following question: "Now, you don't remember just what date, then, any other men came up there to go

(Testimony of O. M. Harri.)

to work on the trail, do you? A. There was never any men worked on the trails around there except myself." What do you mean by that? [365—215]

A. I meant around and above the cabin, because I think that day, if you will remember, there was something said about leaving that lower part out, that wasn't in the contention at all, and I think I left that out at the time.

Q. Let us see what you are testifying about—we were speaking about a tunnel—"A. They might not have started active operations in the tunnel possibly until that time, but they were up there before.

Q. Had they done any work before the 11th or 12th of September? A. Borrowed my shovel and pick one day and went up there and dug around to see a good place to start in. Q. You don't remember that date? A. No, not the exact day. Q. Did they continue the work after that day they borrowed your pick? A. No, they were away a few days, but they came back. Q. When they came back they went to work and stayed there regularly. A. Yes, they stayed downtown a few days and came then and put a tent outside my cabin and built a little blacksmith-shop to keep their tools. Q. That is one of the tunnels they commenced, to put the flume through, to carry the water down? A. That is what I understand it was for—to carry the water through that point. Q. Is that the lower tunnel they commenced to work on—you afterwards built another one? A. It was the upper one. Q. Now, you don't remember just what date, then, any other men came up there



(Testimony of O. M. Harri.)

to go to work on the trail, do you. A. There was never any men worked on the trails around there except myself." Now, when you said around there you didn't mean, as I understand, on the entire trail, but you meant to specify some particular point?

A. I didn't mean on the entire trail from Juneau up to the dam; I don't know how I came to make that answer to that question, Mr. Winn, because I know there was other men [366—216] down between my cabin and Jualpa dam, and there are lots of them in the courtroom now who were there at that time.

Q. You think you want to correct your testimony now? A. I do in regard to that.

Q. Well, you have a different impression now of what was going on up there then than you had when you testified in this case before?

A. I don't think so.

Q. A different impression from what you had when you testified in the Basin case, have you not?

A. I don't think so; I knew at all times what that work was up there, and know my part of it to help it along.

Q. What did you mean a while ago when you said you didn't know why you answered this question in the way you did answer it?

A. What I meant was, if I answered it that way I was wrong, because there were men working on that trail all the time.

Q. Now, then, Casey was there on what day?

A. Casey was there on August 2d, 1910.

Q. And you were working on what that day?

(Testimony of O. M. Harri.)

A. Worked on the trail between the Jualpa dam and my cabin—this Jualpa flume and my cabin—that was on the 2d.

Q. And on the 3d you went up and did this sluicing? A. Yes, sir.

Q. Was Casey with you when you did the sluicing?

A. No, sir; Casey was working on this same piece of trail he started.

Q. How long did Casey work there?

A. I don't remember—he worked there until the 6th, I think; he started on the 2d and worked until the 6th, I think he got in all of that time.

Q. On this trail that you made from the dam to where the cabin was built? [367—217]

A. The trail from the dam to where the cabin was built.

Q. What did you say you did on the 4th?

A. On the 4th I was around with those men there on that trail.

Q. How many men did you have there on the 4th?

A. Five or six men there.

Q. Who were they?

A. Casey, Sandy Hilton, two Siwkashes, Fred Marks and another fellow, I don't remember his name.

Q. What were you doing on that day?

A. Cutting trails—same trail.

Q. Same trail, what trail?

A. Between the Jualpa dam and that bunk-house.

Q. When did you finish that trail?

A. I think it was the evening of the 4th or the 5th.

(Testimony of O. M. Harri.)

Q. Then did you lay these men off?

A. No, we packed lumber over to the house.

Q. You packed lumber over to the house?

A. You see we slid the lumber from the end of this trail down the gulch, and from the gulch packed it to the house.

Q. Then the only help you had on any trail building, I understand, is the little piece above the cabin and the little trail that ran from the cabin down to the Jualpa Company dam, up to the 5th or 6th of the month?

A. I never had nobody helping me on the trails up above the cabin; those men came there about the time the cabin was done; they didn't help me on this trail any; that was my personal work.

Q. What other help did you have on any other trail building other than you have now testified to?

A. None.

Q. This trail you had these men working on was for the purpose of getting up to the house and taking the lumber up to the [368—218] house?

A. Yes, sir.

Q. And you did use it for that purpose, Harri, didn't you? A. Yes, sir.

Q. What distance is that from where the present dam of the company is?

A. Oh, I should judge a couple of thousand feet.

Q. Do you know whether you can stand up at the dam and look down the creek and see that cabin?

A. I don't know whether you can see it from the dam; I think you possibly could from the Jualpa

(Testimony of O. M. Harri.)

flume just above the dam, but I don't think you could stand at the dam and see it.

Q. The cabin sets in around a little turn of the creek?     A. A little point of rocks.

Q. Along where your dam is, along the creek, can you see down from where this trail was being built, from this Jualpa dam, up to where the house was built?

A. No, I don't think you can; I know you can't—it is behind that place where they put the tunnel there.

Q. Do you remember what time it was those contractors came up there and commenced work on the tunnel?

A. I have not got the exact date; I don't know.

Q. Some time in September, wasn't it?

A. Some time in September.

Q. Do you remember the time Mr. Lindsay came up there and made some sort of a survey in September of the tunnel and flume grade?

A. Just a moment—that last question of yours, Mr. Winn, you mean the time they came up there, whether that was active operations or preliminary work?

Q. I asked you if you remembered the first time that Mr. Lindsay came up to make any survey of the tunnel and flume line—do you remember such an occasion? [369—219]     A. No, I don't.

Q. When was the first time you saw Lindsay up there making any survey?     A. I can't remember.

Q. He made the survey just before the work was started on what you call the upper tunnel, did he not?



(Testimony of O. M. Harri.)

A. Yes,—no, I wouldn't be sure about that.

Q. You cannot very well do any work on a grade line, can you, until it has been surveyed out by some one who knows how to survey it out?

A. No, not very well.

Q. Now, where were you, Harri, when the work was going on on that upper tunnel?

A. I was around there all the time.

Q. What were you doing?

A. Well, where they started the tunnel and figured on putting the flume grade, I think I was cutting those steps in.

Q. That was after Mr. Lindsay had been up there and determined where the grade was going to be?

A. I think there was some one before Mr. Lindsay, but I cannot recall who he was; there were surveyors running up and down all the time, both sides.

Q. Did you say there were any surveys of the flume line made for the Alaska-Juneau Company before Mr. Lindsay made it?

A. I said there were surveyors around there on both sides of this creek, that is what I mean.

Q. But what I intended to ask, Harri,—you didn't intend to state that anybody made a survey for the Alaska-Juneau Company for this flume before Mr. Lindsay made a survey, do you?

A. I do not.

Q. Well, then, you were there, do you remember how many times they were on that particular flume before they abandoned it? [370—220]

A. No, I don't; they worked some after I left; I

(Testimony of O. M. Harri.)

think they worked right up to the time it closed up.

Q. On the upper tunnel?

A. No, not on the upper tunnel.

Q. You know there are two tunnels—do you know how long the people worked on the upper tunnel?

A. Just a few days—I don't remember how long.

Q. What made them quit there?

A. I don't know.

Q. Didn't you state in your former examination, Harri, that they quit there because the proposed grade of the Alaska-Juneau Company's flume had been shifted?

A. That was my supposition, but I don't absolutely know it.

Q. The fact is they didn't keep you notified as to what grade they were going to build their flume over?

A. No, sir.

Q. That wasn't your part of the business?

A. No, sir.

Q. Now, then, they did move down and commence another tunnel through which the flume line now runs? A. Yes, sir.

Q. You don't have any idea as to what date they commence that tunnel? A. No.

Q. How was the lumber gotten up there to build the flume—from what point was it taken?

A. Most of it was taken from the Jualpa dam, and some of it was slid down over Cape Horn, and some of the timbers were taken above Cape Horn and gotten down to where the present dam is located.

Q. And then you took them across the creek?

(Testimony of O. M. Harri.)

A. Yes. [371—221]

Q. And the flume line follows the back of the creek pretty well, don't it? A. Yes, sir.

Q. And the matter of getting lumber over there—some of it was brought from the Jualpa dam?

A. Yes, sir.

Q. Some of it slid over about Cape Horn on the left-hand side of the creek as you go up?

A. Yes, sir.

Q. And then you took it right across the creek?

A. To my cabin and up to the flume.

Q. But you didn't have to take it up by the cabin, all of it, did you?

A. That would be the shortest way to take it; it is flat ground there, and it would be easy, would be no trouble, to slide it across by the cabin; they would have to take it behind my cabin to get to the flume.

Q. When they would shoot it down over a bank by your cabin—your cabin how near was that to the bank of the creek?

A. About 25 feet, I should judge.

Q. And that was an easy way to get the lumber in to where you built the flume? A. Yes, sir.

Q. Further on up the creek, at some point there the flume is flush with the bank, in some places, isn't it—that is, in some places it is built alongside the bank of the creek?

A. It is quite a ways above the creek, above the water.

Q. And most of that lumber, wherever you could get across the creek and put it on the bank on the op-

(Testimony of O. M. Harri.)

posite side, that would be the easiest way of getting it up there—now it couldn't be that you resorted to some other method of getting the lumber up there?

A. Yes, sir. [372—222]

Q. Your operations in getting that lumber in there in that way did not necessitate building many trails, did it?

A. Well, if you slide lumber down across the creek in any place along there you would either have to cut steps so men could take it up, or make a piece of trail to slide it down to the creek on.

Q. And you cut those steps as the grade progressed? A. I cut them all along there.

Q. How long were you engaged in doing that?

A. Off and on from the first of August until October.

Q. You quit there on October 3d, did you not?

A. I think that was the day; the day they were having the fun down at the dam.

Q. What part of the flume did they have constructed at that time?

A. They had it constructed from the tunnel above where I lived up to within 2 or 300 feet of where the dam is now constructed.

Q. Did they have that much constructed on the 3d day of October?

A. They had the grade all done and part of the flume—the grade was all done but the flume was not all done.

Q. How far was the grade done?

A. The grade was done up to within two or three



(Testimony of O. M. Harri.)

hundred feet of where the dam is now.

Q. What portion of the flume was done at that time?

A. About half of it—half of what they had graded.

Q. Not half of the whole length? A. No.

Q. That was on October 3d, you are referring to?

A. October 3d.

Q. Now, you were kept up there, to some extent, as kind of an obstructor, were you not, after October 3d? A. I was never instructed as to that. [373—

223]

Q. You were still in the service of the company after October 3d? A. Yes, sir.

Q. How long did you stay in the employ of this company up there in connection with any of their interests during that summer.

A. Until New Year's Day, 1911.

Q. Now, then, part of the work that you did up there in addition to what Mr. Hellenthal has questioned you about, was to move up to the Ebner dam and place a tent across the grade of the Ebner Company, and did nothing except sit in the tent there, is that true? A. No, it is not true.

Q. What time did you go up there and pitch a tent on some ground up above where you had been working, prior to October 3d?

A. I went up there October 3d.

Q. You were still in the employ of the Company?

A. Yes, sir.

Q. Now, what did you do then for the Company?

(Not answered because of objection; and all evi-

(Testimony of O. M. Harri.)

dence of this witness in reference to anything that he did after October 3d is stricken.)

Q. You didn't quit the service of the company on October 3d, did you? A. No, sir.

Q. Now, then, Harri, you have shown a great deal of interest, have you not, in behalf of this Alaska-Juneau Gold Mining Company in connection with its getting its flume line in and getting the water out of Gold Creek before the Ebner Company did?

A. I done a great deal of work there, yes. [374—224]

Q. When did you go up there at the Ebner Company's dam and on the grade that they were seeking to put a flume on to get the water out of Gold Creek?

A. Well, I don't just like the way you put the question, Mr. Winn.

Q. Because your counsel don't like it, isn't it, Harri?

A. No, it isn't; it is the under-current—you asked me a question and then kind of insinuate that I was half way a criminal in stopping these people from putting in their flume.

The COURT.—That is a simple question—when did you go up there on that occasion?

A. I went up there on October 3d.

Q. You and a man by the name of Scotty, didn't you? A. No, sir.

Q. When did Scotty come up there?

A. Scotty came later on.

Q. When you got up there, Harri, you took and put your tent on the grade line which had been

(Testimony of O. M. Harri.)

brushed out and gotten ready for the flume line of the Ebner Company, didn't you?

A. You are partly right and partly wrong.

Q. On what am I wrong?

A. Below my tent, it was brushed out and grade stakes in; above, it was not.

Q. You know where they came up and were putting the flume in, that you had a fence right across their flume line?      A. That was later on.

Q. And your tent was put in a place where they had to change the grade of the flume and build it around your tent and your fence, didn't they?

A. Yes.

Q. Then your tent evidently was on the line that they intended to build the flume, wasn't it, Harri?

A. Yes, sir.

Q. Who instructed you to do that, Mr. Kinzie?  
[375—225]

A. You mean put my tent there?

Q. Yes.

A. Either he or his agents did.

Q. You stayed up there at that place how long?

A. I stayed up there until New Year's day, 1911.

Q. What were you doing sitting in the cabin while you were there?

A. Done some assessment work across the road; cleared off brush across the road, and cleared off the grade to start a tunnel in the bank there, left-hand side of the road going up to the Basin.

Q. Were you down at the place on October 3d

(Testimony of O. M. Harri.)

when Kinzie claims he got his diversion out of Gold Creek?

A. I wasn't there in the afternoon, I was there in the morning.

Q. They were working around this particular point, weren't they, Harri, during the forenoon of October 3d, at the place where they claim they got the diversion? A. Yes, sir.

Q. And they got through with you at that place and then sent you on further up the creek, and you went where you stated you did? A. Yes, sir.

Q. Do you know a young man by the name of Fred Radel? A. No, I cannot recall him now.

Q. Did you not up there along, say, September 23, 24 or 25th and up to the 3d of October, meet two young men that worked there, one by the name of Radel and one by the name of Middleton?

A. Were they working in the office?

Q. They were working up there for Mackay? [376—226]

A. I remember those boys there, but I don't remember their names.

Q. I will ask you—I can refresh your memory, Harri, I think, by asking you a question concerning it—do you remember a young man by the name of Radel who worked there commencing the 1st of October, on the mill site of the Ebner Company—the mill site that was graded off by and under Mr. Mackay around near Cape Horn or Shady Bend—sharpening steel or handling steel, and who used to meet you frequently and have talks with you?



(Testimony of O. M. Harri.)

A. Well, I know most of those boys by sight that worked there, but I don't recall their names now.

Q. I will ask you if you remember, about the 1st of 2d of October, of having a conversation with a man by the name of Radel, up about the mill site or on the road near the mill site of the Ebner Company, in which you stated to him that Kinzie had sent you up in the first place on this property to look over the Parish No. 2 and to find out whether, in your opinion, the assessment work had been kept up on it, and that you reported back to Kinzie that it had been; and that you further said that you didn't know why it was that he, Kinzie, kept you up there to go ahead and do the work, but that it was under the orders of Kinzie?

A. No, I never made no such statement as that.

Q. Never made any such statement as that?

A. No, sir; I never did.

Q. And you cannot tell whether you remember any such man as Radel?

A. Not by that name; I remember by sight most of the men working around there at that time, but I don't remember the names; I think the only two men that I can remember the names were Honsaker and Al Black. [377—227]

Q. And at that time this conversation that took place between you and Radel was when you and Fred were alone and it was right there at the point of Cape Horn either on the first or second day of October?

A. No, sir; I never had no such conversation.

(Testimony of O. M. Harri.)

Q. You are sure of that?

A. I am sure of that.

Q. So as not to have any misunderstanding on it, when you referred to your cabin you referred also to the building that is called the bunk-house?

A. Yes, sir.

Q. It is one and the same building?

A. Yes, sir.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Harri, when you went up on October 3d to put up your tent, on whose ground did you put it?

A. I don't know.

Q. You know on what claim?      A. I don't.

Q. Was there any grade there when you put the tent up?      A. No, sir.

Mr. HELLENTHAL.—I guess that is all.

(Witness excused.)

(Whereupon court adjourned until 10 o'clock tomorrow morning.) [378—228]

MORNING SESSION,

June 25, 1914, 10 A. M.

The plaintiff, to further maintain the issues on its part, introduced as a witness JAMES LYNN, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of James Lynn, for Plaintiff.**

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. Your name is James Lynn?      A. Yes, sir

Q. You live in Juneau?      A. Yes, sir.

Q. Were you residing here in the month of August 1910?      A. Yes, sir.

Q. At that time by whom were you employed?

A. W. W. Casey.

Q. What were you doing, Mr. Lynn, for Mr. Casey?      A. Teaming.

Q. In the course of such employment did you have occasion to haul any lumber for the Alaska-Juneau Gold Mining Company?      A. I did, sir.

Q. From where did you haul that lumber and to where?

A. Hauled that lumber from the Ferry Float to the Jualpa dam.

Q. The Ferry Float in Juneau?      A. Yes, sir.

Q. To the Jualpa dam up near where the Alaska-Juneau bunk-house was being built by Mr. Harri?

A. Yes, sir.

Q. When did you complete the hauling of that lumber?      A. On the 6th of August.

Q. When did you commence it?

A. About the 4th of the month.

Q. About the 4th of August?

A. About the 4th of August. [379—229]

Q. How many loads did you haul?

A. Three loads.

(Testimony of James Lynn.)

Q. Have you anything by which you can accurately fix the date upon which you completed the work?     A. No, sir.

Q. I call your attention here to a little slip—who made that slip?     A. I did, sir.

Q. At what time did you make it?

A. Made that on August 6th, 1910.

Q. Does that little slip fix in your mind the date when the hauling of that lumber was completed?

A. Yes, sir; it does.

Q. What is the date as fixed by that slip when the hauling of that lumber was completed?

A. August 6th, 1910.

Mr. HELLENTHAL.—I offer that slip in evidence.

Judge WINN.—I want to cross-examine the witness first, your Honor, about it.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Is this in your handwriting?     A. Yes, sir.

Q. Have you had it in your possession since you made it up, or where has it been since then?

A. I haven't, no.

Q. Whose possession has it been in?

A. I don't know; Casey's, I suppose.

Q. You don't know, Mr. Lynn, of your own knowledge, who has had it, do you? [380—230]

A. No, sir; I don't.

Q. When and where did you make it?



(Testimony of James Lynn.)

A. When?

Q. Yes.

A. Well, I think I made it on the 6th.

Q. Do you think so or are you positive of it, Mr. Lynn?

A. I am positive of it; that is my own handwriting, and I certainly made it that day.

Q. To whom did you turn it over?

A. W. W. Casey.

Q. You hauled the lumber for Mr. Casey?

A. Yes, sir.

Q. Mr. Casey paid you for hauling the lumber up there?

A. Certainly did; yes, sir.

Q. Did you haul any lumber before or after this date up there for the Alaska-Juneau Company?

A. I think so.

Q. Well, how much more lumber did you haul?

A. I couldn't tell you—don't know.

Q. You hauled quite a bit up there for them, did you not?

A. I probably did, I don't remember.

Q. How do you remember this lumber so distinctly?

A. Well, account the creek was pretty high and I come pretty near drowning a couple of horses up there.

Q. Did you help any to clear out any path from the dam on up?      A. No, sir.

Q. Did Casey have that done?

A. No, sir; I don't think so—not to my knowledge.

(Testimony of James Lynn.)

Q. Do you remember this lumber as being lumber taken up there to use in any particular way, building the flume or anything of that kind—do you segregate this lumber that you have got on this slip from any other lumber you generally hauled [381—231] up there?     A. I do, yes.

Q. For what reason?

A. For the cabin built for O. M. Harri.

Q. What day did you haul the first lumber up there, do you remember?

A. About the 4th of the month.

Q. About the 4th of August?     A. Yes, sir.

Q. And that was the first lumber that was hauled up there, Mr. Lynn, on the 4th?

A. I think so; I hauled one load that day.

Q. How many days did it take you to finish up the job?

A. I think it was three days.

Q. You hauled on the 4th, 5th and 6th, did you?

A. Yes, sir.

Q. Did you deposit any other lumber at this particular place?     A. No, sir.

Q. Where did you deposit the other lumber that you hauled up there for the Alaska-Juneau people, [Mr. Lynn—that is, with reference to some place on the creek—was it at the Cape Horn or further up near the Ebner works, or was it between Cape Horn and the Ebner works?

A. I hauled lumber to Cape Horn and the Jualpa dam; that was later on; I don't remember what time that was; that was later on.

(Testimony of James Lynn.)

Q. How much later on, do you remember—a week or two weeks?

(Not answered because of objection.)

Mr. HELLENTHAL.—This slip, your Honor, I offer in evidence.

(Whereupon said slip was received in evidence and marked Plaintiff's Exhibit No. 23.)

Mr. HELLENTHAL.—There is a question I didn't ask him on direct [382—232] examination—I will ask him now.

Q. Now, I forgot to ask you, when you came up there with the first load did you find a road or trail leading from the Jualpa dam up to the Basin?

A. I did.

Q. Well, what did you find there in the way of a road or trail—what did you see in a general way?

A. I seen a trail going from the Jualpa dam up the side of the hill around towards Harri's cabin, somewhere in that vicinity.

Q. When you came there on the 4th, the first time, did you see anybody working on that trail?

A. I did.

Q. Who was working there that you now remember of?     A. Russell Casey.

Q. Did you see anybody else working there?

A. Yes, I know there was two Indians working there at the time.

Q. Do you know their names?

A. No, sir; I do not.

Q. You remember Russell Casey was there?

A. I remember Rusell Casey.

(Testimony of James Lynn.)

Q. That trail, how far was that cut the time you came with the first load, Mr. Lynn, as near as you can remember?

A. I should judge 300 feet.

Q. You wouldn't say positively as to that, but you are sure Russell Casey was there?

A. Yes, sir.

(Questions by Judge WINN.)

Q. That was on the 4th of August?

A. The first load I went up there with.

Q. That is a part of the old road that you saw brushed out that led up to where Harri afterwards built the cabin—you don't [383—233] know how far it ran up, do you?

A. No, that is the road that Harri was brushing out.

Q. That is the road they took the lumber over to build the house or cabin?

A. That is right.

Judge WINN.—That's all.

Mr. HELLENTHAL.—That's all.

(Witness excused.) [384—234]

The plaintiff, to further maintain the issues on its part, introduced as a witness RUSSELL CASEY, who then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer as follows:



**Testimony of Russell Casey, for Plaintiff.**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name?      A. Russell Casey.

Q. Where do you live?      A. Juneau.

Q. Did you live here in the month of August, 1910?

A. Yes, sir.

Q. You know where the Jualpa dam is?

A. Yes, sir.

Q. Do you know where the bunk-house of the Alaska-Juneau Company is in that vicinity?

A. Yes, sir.

Q. And the Alaska-Juneau dam?      A. Yes, sir.

Q. And flume?      A. Yes, sir.

Q. Do you know the Alaska-Juneau Company?

A. I know there is such a company.

Q. Do you know who they are?      A. Yes, sir.

Q. Do you know Mr. Harri, O. M. Harri?

A. Yes, sir.

Q. Were you at any time employed by O. M. Harri to work for the Alaska-Juneau Company?

A. Yes, sir.

Q. When was that, Mr. Casey?

A. That was August 2d, 1910, about 9 o'clock in the morning. [385—235]

Q. What were you employed to do?

A. I was employed to brush out a road from the Jualpa dam over to Snow Slide Gulch.

Q. What did you do—when did you enter upon the employment—when did you go to work?

(Testimony of Russell Casey.)

A. About 12 or 12:30 the second of August, 1910.

Q. Where did you go to work?

A. Just to the right up the hill from the Jualpa dam.

Q. What did you do that day, Mr. Casey?

A. Cut out a trail.

Q. Worked on a trail?      A. Yes, sir.

Q. Where did the trail lead from, and to where?

A. Led from a point just below the Jualpa dam to up the hill towards Snow Slide Gulch.

Q. Who was with you?

A. In the afternoon of the 2d?

Q. Yes.      A. Mr. Harri.

Q. Did you continue that work the next day?

A. Yes, sir.

Q. Who was with you on that day, if you remember?      A. I believe two Indians and Burg.

Q. Two Indians and a man by the name of Burg?

A. I am not sure about Burg, but I know the two Indians were there.

Q. What did you do the next day?

A. The next day we packed lumber?

Q. Lumber came up on the 4th?      A. Yes, sir.

Q. Where did you pack the lumber from and where to?

A. From the Jualpa dam to Snow Slide Gulch and slid it down over Snow Slide Gulch to the foot of Snow Slide Gulch. [386—236]

Q. How long did you continue that work of carrying lumber over?

A. Until the evening of the 6th.

(Testimony of Russell Casey.)

Q. At that time had all the lumber been delivered?

A. Yes, sir.

Q. What was done with the lumber?

A. What was finally done with it?

Q. Yes. A. Used to build a cabin.

Q. When was the construction of that cabin commenced?

A. I believe on the morning of the 6th.

Q. Do you remember who worked on it?

A. I believe Burg did some of the work, and some other carpenter.

Q. Do you remember anyone else who helped you carry the lumber over?

A. Yes, sir.

Q. Who was the other?

A. Sandy Hilton and Cash Cole.

Q. They helped you on what day?

A. I should judge somewhere between the 4th and the 6th, or the 3d and the 6th.

Q. Somewhere between that? A. Yes, sir.

Q. On the 2d where did Harri work, do you remember?

A. On the trail leading from the Jualpa dam to Snow Slide Gulch—to this side of Snow Slide Gulch.

Q. He was with you? A. Yes, sir.

Q. On the 3d where was Harri?

A. On the 3d I don't know where he was.

Q. He wasn't with you? A. No, sir.

Mr. HELLENTHAL.—You may cross-examine.

(Testimony of Russell Casey.)

Cross-examination.

(By Judge WINN.)

Q. Why is it you remember these dates so distinctly, Russell?

A. Because Harri came down to the office and I was in the office at the time, and he said he would probably have some hauling done, and my father asked him—said I would like to go to work, would there be any chance for me there, and he said to go on the morning of the 2d, but I didn't go until noon, and I went with Harri at that time.

Q. What have you got that refreshes your memory about these dates?

A. I know it from the fact I know what time I was in the office.

Q. Have you talked with anyone to refresh your memory on it since this trial commenced or at any other time?     A. Yes, sir.

Q. Do you know whether or not your father had a contract to deliver this lumber from Juneau up to the place where Harri's house is built?

A. Yes, sir.

Q. Your father had that contract?

A. No, sir.

Q. He didn't?     A. No, sir.

Q. How do you know?     A. I know he didn't.

Q. How do you know?

A. I know he had a contract to deliver the lumber to Jualpa dam, but not to Harri's cabin.

Q. That was the only contract he had?

A. To the best of my knowledge it was.



(Testimony of Russell Casey.)

Q. Did he tell you so?

A. No, he didn't tell me so. [388—238]

Q. You went up there on the 2d? A. Yes, sir.

Q. At that time had there been any brushing out done there when you went up on the 2d?

A. No, sir.

Q. Had there been anything done when you got up there on that day? A. No, sir.

Q. Did you see any brushing out around there that had been done at all—any kind of brushing out, on that day?

A. There might have been some, but there wasn't any on the trail.

Q. And this brushing out was done for the purpose of taking lumber up there to build Harri's house, was it? A. Yes, sir.

Q. Now, on the 2d you say that was your first day up there and Harri worked with you?

A. Yes, sir.

Q. You and he brushed out together?

A. Yes, sir.

Q. On the 3d who was with you?

A. Two Indians and probably a man by the name of Burg, I am not sure.

Q. You are not sure whether the man Burg was there or not—you remember the Indians were there, but don't remember Burg?

A. He was there, but whether he worked on the trail or not I don't know; I know the Indians were there.

(Testimony of Russell Casey.)

Q. What Indians—do you know where they are now?

A. I wouldn't know them if I was to see them, and I *don't where* they are.

Q. You say you finished the brushing out on the 6th? [389—239] A. No, sir.

Q. On what day? A. On the 3d.

Q. You got the entire path brushed out on the 3d?

A. Yes, sir.

Q. And on the 4th you commenced taking lumber up there? A. Yes, sir.

Q. When do you say they commenced work on the cabin?

A. On the 6th; the bluff had been cleared for the cabin and I think the carpenter came on the morning of the 6th.

Q. Did you stay up there until the cabin was completed? A. No, sir.

Q. How much longer did you work there, Russell?

A. Up to the 6th.

Q. Quit on the day of the 6th? A. Yes, sir.

Q. You don't know anything about when the cabin was completed, do you? A. No, sir.

Judge WINN.—That is all, Russell.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Russell, do you know where Mr. Burg is now?

A. He is dead, I think.

Q. Do you know where the Indians are?

A. No, sir.

(Testimony of Russell Casey.)

Mr. HELLENTHAL.—That's all.

(Witness excused.) [390—240]

The plaintiff, to further maintain the issues on its part, introduced as a witness SANDY HILTON, who then being duly sworn to tell the truth, the whole truth and nothing but truth, testified in answer to questions as follows:

**Testimony of Sandy Hilton, for Plaintiff.**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Sandy Hilton? A. Yes, sir.

Q. You live in Juneau? A. Yes, sir.

Q. You were living here in the year of 1910, in August? A. Yes, sir.

Q. You know O. M. Harri? A. Yes, sir.

Q. And Russell Casey? A. Yes, sir.

Q. You know the Alaska-Juneau Gold Mining Company? A. Yes, sir.

Q. Do you know where the Jualpa dam is?

A. Yes, sir.

Q. And where the Alaska-Juneau bunk-house was built? A. Yes, sir.

Q. The small bunk-house? A. Yes, sir.

Q. And where the Alaska-Juneau dam is, and their flume line? A. No, sir.

Q. You haven't been up there since that was built?

A. No, sir.

Q. You know that locality, anyhow?

A. Yes, sir.

Q. You said you knew it, didn't you, Mr. Hilton—

(Testimony of Sandy Hilton.)

you are familiar with that locality up there? [391—241] A. Not exactly.

Q. You know where it is though? A. Yes, sir.

Q. Were you ever employed by the Alaska-Juneau Company—by Mr. Harri, to work for the Alaska-Juneau Company? A. Yes, sir.

Q. When was that?

A. The afternoon of the 3d of August, 1910.

Q. Where were you employed to work?

A. Employed to pack lumber.

Q. From where to where?

A. From the Jualpa dam up to the cabin.

Q. When did you commence work?

A. The afternoon of the 3d of August, 1910.

Q. How long did you work?

A. Worked for about 3 days.

Q. During that time the lumber came up and was carried over? A. Yes, sir.

Q. And when did the carpenters commence to work on the house?

A. The morning of the 6th, if I ain't wrong about it.

Q. Was the lumber all delivered by the 6th?

A. I believe it was; I ain't sure.

Q. Do you remember now when the lumber first came up?

A. The first lumber—no, I don't know exactly.

Q. You are not sure about that—it came while you were there?

A. The first load came in the afternoon, I think—maybe in the morning.



(Testimony of Sandy Hilton.)

Q. At that time when you came there, what was done in the way of cutting the trail from the Jualpa dam to Snow Slide gulch?

A. Brushing it out is all I know.

Q. Who was brushing it out? [392—242]

A. Two Indians, Burg, Russell Casey, I understand, and I don't know exactly now; I was hired there to pack lumber and that is all.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. You were hired to pack lumber and went up there on what day, Sandy?

A. Afternoon of the 3d; I ain't sure of it.

Q. You don't know anything about who was cutting brush—you didn't see them cutting brush?

A. No, sir; I don't remember; when I came up there I was employed by M. O. Harri to carry lumber, and the trail was cut a little more than 300 feet.

Q. The trail was about half cut when you went up there? A. Yes, sir.

Q. When did they finish the trail up about as far as where they afterwards built the cabin, Sandy?

A. About the 3d, I think, I don't know exactly.

Q. How far did you pack the lumber up—did you pack it up to where the cabin was afterwards built?

A. Yes, sir; we took it up the trail and over Snow Slide gulch and slid it down to the foot where the cabin is now located.

Q. What day do you say it was, Sandy, that there were two Indians there?

(Testimony of Sandy Hilton.)

A. It was the 3d; when I started in the afternoon of the 3d there was two Indians there.

Q. They helped to pack the lumber up?

A. Yes, sir.

Q. And you and Russell Casey helped them?

A. Yes, sir. [393—243]

Q. Where was this man Harri, the lame man?

A. He was mostly up the creek, and then he was down there taking charge of his crew, the men that were packing lumber.

Q. He was bossing the job of carrying the lumber up?

A. Bossing the job, yes; but most of the time up the creek.

Q. He was down there at the Jualpa dam most of the time? A. Yes, and up the creek.

Q. He was down at the Jualpa dam at the time the lumber was being hauled? A. Yes, sir.

Q. And directed you people where to take it?

A. Yes, sir.

Q. Who paid you for the work, Sandy?

A. Of course, I got my time from M. O. Harri, and of course, got paid by the Alaska-Juneau Company.

Q. How many days did you say you worked?

A. I worked three days; the 6th was my last day.

Q. Part of the 3d, 4th, 5th and 6th?

A. Yes, sir.

Q. And the carpenters, you say, came up on the 6th?

A. Yes, came up on the morning of the 6th.

Judge WINN.—That's all.

Mr. HELLENTHAL.—That's all.

(Witness excused.) [394—244]

The plaintiff, to further maintain the issues on its part, introduced as a witness F. F. SUMMERS, who then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. F. Summers, for Plaintiff.**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Mr. Summers?      A. Yes, sir.

Q. What are your initials, Mr. Summers?

A. F. F.

Q. You reside at Douglas—Treadwell?

A. Treadwell.

Q. Were you residing there in the year of 1910?

A. Yes, sir.

Q. Do you know O. M. Harri?      A. Yes, sir.

Q. Do you know where the property of the Alaska-Juneau Company is up in the vicinity of Snow Slide gulch?      A. Yes, sir.

Q. Did you have occasion to go there in the year of 1910?      A. Yes, sir.

Q. On what day did you go there?

A. August 1st.

Q. Who did you go there with?

A. O. M. Harri.

Q. From where did you go to where?

A. We went from the Jualpa dam in that vicinity up above that, up near Snow Slide gulch.

(Testimony of F. F. Summers.)

Q. Then where did Harri go?

A. Why, when I left him he was starting up the creek—up that way (indicating).

Q. Where did you go? [395—245]

A. I came back to Treadwell.

Q. What was your purpose in going there with Mr. Harri?

A. To show him where the Oregon Claim was located.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Are you a surveyor, Mr. Summers?

A. No, sir.

Q. Did you ever work on Gold Creek or on any of the properties of the Alaska-Juneau prior to August 1st, 1910? A. I never worked there, no.

Q. How many times had you been up the creek prior to that time?

Mr. HELLENTHAL.—Excuse me, Judge, while I ask him a question.

Q. Mr. Summers, have you anything from which to refresh your memory as to the exact date when you went up there with Mr. Harri?

(Not answered because of objection.)

Q. Did you give the year, Mr. Summers, when you went up there? A. It was 1910.

(Questions by Judge WINN.)

Q. How many times had you been up Gold Creek to look over the boundary lines of the property of this company prior to August 1st? A. Once.



(Testimony of F. F. Summers.)

Q. And you knew where the boundary lines of the Oregon Claim were, did you?

A. Well, approximately; I didn't know right to the inch.

Q. Did you see any corner posts? A. I did not.

Q. And you simply went up there to show him where the Oregon Claim was?

A. Yes, sir. [396—246]

Q. How far up did you go, Mr. Summers?

A. Why—

Q. To the Jualpa dam or above it?

A. My impression is that I went up very close to Snow Slide gulch and to where Snow Slide gulch laps into the creek; I wouldn't say I went right there, but close enough to show him where the claim was.

Q. Then you came right back? A. Yes, sir.

Q. And you didn't go up any more right after that, did you? A. No, sir.

Judge WINN.—That's all.

(Witness excused.) [397—247]

The plaintiff, to further maintain the issues on its part, introduced as a witness L. D. MULLIGAN, who then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

### **Testimony of L. D. Mulligan, for Plaintiff.**

#### **Direct Examination.**

(By Mr. HELLENTHAL.)

Q. State your name. A. L. D. Mulligan.

Q. Where do you live, Mr. Mulligan?

(Testimony of L. D. Mulligan.)

A. Juneau.

Q. Did you ever work for the Alaska-Juneau Gold Mining Company?     A. I did.

Q. When?     A. I think I started to work—

Q. I will ask you, were you working for them—did you do any work for them in the month of August, 1910?     A. I did.

Q. Are you the same L. D. Mulligan whose name is attached to a water location notice posted up the creek on Gold Creek?     A. Yes, sir.

Mr. HELLENTHAL.—I will now offer this notice in evidence, your Honor—a certified copy of it.

(Not received in evidence because of objection.)

Q. I now hand you here a certified copy taken from the records of the Juneau Recording District, marked for identification Plaintiff's Exhibit No. 24 and ask you to look at it and state what it is—do you know what it is?     A. Yes, I do.

Q. What is it, Mr. Mulligan, in a general way?

A. It is a copy, I think, of the notice I put up, the water notice, the 1st day of August, 1910.

Q. What, if anything, did you do in the way of posting this notice, [398—248] Mr. Mulligan?

A. I was sent up there by Mr. Kinzie on August 1st.

Q. What year?     A. 1910.

Q. Who were you working for?

A. Alaska-Treadwell Gold Mining Company.

Q. In that connection who were you working for?

A. Alaska-Juneau Gold Mining Company.

(Testimony of L. D. Mulligan.)

Q. Mr. Kinzie is General Superintendent of the Company? A. Yes, sir.

Q. You were sent up there to post this notice where? A. On Gold Creek.

Q. Did you post it at the point where you were directed to post it?

A. Posted it at the point as near as I could, I think.

Q. How far was that below the Ebner mill building? A. About 150 feet, I should judge.

Q. Down the creek? A. Down the creek.

Mr. HELLENTHAL.—I now offer it in evidence.

(Whereupon said notice was received in evidence and marked Plaintiff's Exhibit No. 24.)

Q. Mr. Mulligan, referring to the exhibit No. 24, the paper that was handed you, is that the same notice you posted or a copy of it?

A. This is a copy of it.

Q. That isn't the paper you posted?

A. No, sir.

Q. The paper you posted remained posted on the ground? A. Yes, sir.

Q. And that is an exact copy of it? A. Yes, sir.

Mr. HELLENTHAL.—I offer in evidence now, your Honor, a deed from [399—249] Mr. Mulligan to the Alaska-Juneau Gold Mining Company transferring the paper title of this water right.

(Whereupon said deed was received in evidence and marked Plaintiff's Exhibit No. 25.)

Q. I think you have already said, Mr. Mulligan, that you did not locate that water for your own use,

(Testimony of L. D. Mulligan.)

but you were working for the Alaska-Juneau Gold Mining Company when you made the location?

A. I did.

Q. Referring to Exhibit No. 25—that is the deed by which you transferred the paper title to the Alaska-Juneau Gold Mining Company, or a copy of it?

A. I think it is a copy.

Q. That was executed on what date, Mr. Mulligan?

A. On August 2d.

Q. The day after you posted the notice?

A. On August 2d, 1910.

Q. That was the day after you posted the notice?

A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. You delivered over the deed to Kinzie as soon as you went up and posted the notice?

A. The next day.

Q. And that is the day you made this paper writing that has been offered in evidence, termed a deed?

A. I never noticed the date on the paper.

Judge WINN.—That's all.

(Witness excused.) [400—250]

The plaintiff, to further maintain the issuance on its part, introduced as a witness, R. G. WAYLAND, who, having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:



**Testimony of R. G. Wayland, for Plaintiff.**

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. You have already been sworn, Mr. Wayland?

A. Yes.

Q. Do you know Mr. F. W. Bradley?      A. Yes.

Q. Did you know him in the summer of 1909?

A. Yes.

Q. Did you receive any instructions from him and go over any matters in reference to the diversion of this water up there—go ahead and tell what you did and what Mr. Bradley did?

A. Mr. Bradley came out in the survey office a number of times during the summer of 1909 with Mr. Kinzie, and had discussions—

Q. Don't say what they said.

A. Discussed plans for the proposed development of the Alaska-Juneau property—the contemplated plan, flume line, water right, and so forth in a preliminary manner.

Q. What did you do at that time in the way of going over your map and the like?

A. I went over all the maps in the office at that time and mapped out routes approximately—

Q. Routes for what?

A. Flume, water and tunnel lines.

Q. Now, in the fall of 1909 what, if any, instructions did you get looking towards the appropriation of this water?

A. I was directed by Mr. Kinzie to have a survey

(Testimony of R. G. Wayland.)

made for the tram and flume line, but on account of the snow and the [401—251] condition of the ground it was impossible to do it at that time, which was late in the fall of 1909.

Q. You have charge of the surveyor's crew of the Alaska-Juneau Company, haven't you?

A. Yes.

Q. What did you do in the way of directing anyone to make that survey?

A. We had this survey on our list to be done as soon as practicable; as soon as we could arrange the work to do it as soon as the weather and other conditions would permit.

(Motion to strike answer as not responsive.)

The COURT.—Just answer the question, Mr. Wayland—what did you do, any directions that you gave or steps that you took, to carry out the plans?

A. I directed Mr. Lindsay and told him that he would have to do this work as soon as the conditions would permit.

Q. As soon as weather conditions and things of that character would permit. Now, you were not on the ground when the survey was made?

A. No, sir.

Q. Were you on that ground in the month of August, 1910?

A. Late in the month of August.

Q. 1910—who was working at that time?

A. O. M. Harri.

Q. What was Mr. Harri doing?

(Testimony of R. G. Wayland.)

A. He was cutting trails, making steps in the bank, and doing work of that kind.

Q. What, if anything, did you do at that time, late in the month of August, in the way of assisting Mr. Harri or giving him the approximate grade for the flume line or tunnel work?

A. I ran a line from corner No. 5 of the Idaho up—

Q. I am asking you now what you did in the way of giving to Mr. [402—252] Harri or indicating to Mr. Harri the grade of the flume?

A. I stood up on the Jualpa flume and leveled over toward the point at which he had a drift in the wall, and I set a point which would be about the grade for the flume to indicate to him that he had been working a little bit too low.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

What time in August was this, Mr. Wayland?

A. That was the 29th or 30th.

Q. And there was nobody working up there but Harri when you went up there?

A. That is all I saw; there may have been others there. I don't know.

Q. You didn't go any further up than the Jualpa dam?

A. I went up that way as far as the Mulligan notice.

Q. Went up as far as the Mulligan notice?

(Testimony of R. G. Wayland.)

A. Yes, sir.

Q. And you pointed out from the Jualpa dam about where a grade ought to go to take the water out from where the Mulligan notice was posted?

A. By the Jualpa flume I mean the intake of the old Jualpa flume.

Q. And you pointed out approximately on the opposite side of the creek, on the 29th day of August, about where a flume line would have to go to take water out where the Mulligan notice was?

A. Yes.

Q. Had you been up there at any time during the month of August [403—253] besides this trip?

A. Once before.

Q. When was that?      A. About the 27th.

Q. Did you see Harri then?

A. I saw him then, yes.

Q. There wasn't anybody up there with him?

A. Mr. Kinzie was there.

Q. I mean nobody working with Harri?

A. I didn't see anybody else; there may have been somebody else.

Q. Was the cabin or house completed at that time?

A. Yes.

Q. Now, then, the grade that you pointed out to Harri isn't the grade that you flume was ultimately put upon, Mr. Wayland, was it?      A. No, sir.

Q. Mr. Lindsay went up and made that survey—you didn't make that survey, did you?

A. Mr. Lindsay made the final survey.

Q. And the final survey upon which your grade



(Testimony of R. G. Wayland.)

was built was lower down the hill than what you had pointed out to Harri?     A. Yes.

Judge WINN.—I expected, your Honor, to recall Mr. Wayland for a few questions on cross-examination in regard to this map, and I would like to ask him the questions now.

Mr. HELLENTHAL.—No objection.

The COURT.—Before you proceed, Judge Winn, I would like to ask Mr. Wayland a question or two.

Q. Mr. Wayland, you testified that you know where the Mulligan notice was posted?

A. Yes.

Q. Did you make this Plaintiff's Exhibit No. 1, or was it made [404—254] under your direction?

A. I made it.

Q. You are familiar with the ground up there?

A. Yes.

Q. Can you point out on Plaintiff's Exhibit 1 where the Mulligan notice was posted?     A. Yes.

Q. I wish you would do so.

Mr. HELLENTHAL.—Mark it with the figure 1.

A. I have marked it with the figure 1.

Judge WINN.—Be sure to identify that, Mr. Wayland, because there is another figure 1—it is the figure 1 that is just down Gold Creek from what is written in on this exhibit "New Ebner Mill and Excavation for Enlargement"?     A. Yes.

The COURT.—Now, you may proceed with your questioning.

Q. (By Judge WINN.) Was that 29th day of

(Testimony of R. G. Wayland.)

August the first time that you had seen that Mulligan notice?

A. I saw it on the 27th.

Q. That is the first time you had seen it?

A. That is the first time that I saw it.

Q. Then you went back on the 29th and had this conversation that you have just related with O. M. Harri? A. Yes.

Q. What, if anything, did you observe on the opposite side of the creek as to any work that had been done, Mr. Wayland—that is, I mean on the opposite side of the creek from where you stood—that would make it the left bank of the creek going down the creek?

A. I noticed trails—in fact I followed up the trails as far as nearly to the falls, where the present Alaska-Juneau dam now [405—255] is—there had been steps cut in the side of the bank and a path on over, and there had been paths cut on the right bank of Gold Creek also.

Q. Been some work done on both sides of the creek? A. Yes.

Q. What do you mean by the falls, Mr. Wayland?

A. Falls where the Alaska-Juneau dam is—there is a fall there of about 15 or 20 feet; that is as far as I could go.

Q. That is the work that Harri had been doing, was it?

A. Yes; I didn't see all of it, though.

Q. You say Harri's cabin was completed at that time? A. Yes.

(Testimony of R. G. Wayland.)

Q. Now, I want to ask you a few more specific questions, Mr. Wayland, in regard to this map. Do you know what particular mining claims the Alaska-Juneau Company claims lie along the exterior eastern boundary line of this exhibit?

A. I could name several of them, yes.

Q. Well, give me the names of what you can, Mr. Wayland.

A. The located, but not patented, lode claims are A-1, 2, 3, and 4; Z Lode, Chieftain, the Cap, X, U, W—the patented lodes—

Q. I don't care particularly about the patented ones—I want the unpatented. Will you indicate on this exhibit as to about what space of the exterior boundary lines of what is termed the Alaska-Juneau property that these unpatented claims are and I wish you would mark it in some way to indicate it, Mr. Wayland.

A. From a point marked X in the center of the map, at the top corner of the map to a point marked Y directly under the word "Mining" in the "Alaska-Juneau Gold Mining Company" are the claims I spoke of. [406—256]

Q. Do you remember approximately when those claims were located—over what period of time?

A. 1911 and '12.

Q. Now, as to any other unpatented claims, Mr. Wayland, besides those that I took you over when you were on the witness-stand before—the mining claims that run down the zig zag figure enclosing the Alaska-Juneau flume, those are unpatented, are

(Testimony of R. G. Wayland.)

they? A. Those are unpatented.

Q. Now, where else are there any other unpatented claims along the exterior boundary lines of this exhibit—just confine yourself to the exterior boundary lines now?

A. The boundary line to the left of the letter X also encloses unpatented claims as far as the property of the Ebner Gold Mining Company in the upper left-hand corner.

Q. Well, to that point along that line are they just one claim wide, or in some places is there more than one unpatented claim adjoining?

A. Entirely covered.

Q. From what point, now,—I wish you would mark it, from what point down to what point on a straight line is covered, Mr. Wayland.

A. From X to Z.

Q. Is there any other unpatented claims along that boundary line except those we have gone over?

A. There are two or three claims that are shown by points in the lower boundary line; practically the whole exterior is unpatented ground with the exception of the two points I spoke of.

Q. Where are the two points that form the exception, Mr. Wayland?

A. The points marked W and U and down to a point marked V. [407—257]

Q. And all those unpatented claims have been taken up since August 1, 1910?

A. All on the boundaries have.

Q. Now, in indicating what you term the Ebner



(Testimony of R. G. Wayland.)

property have you included in that property any unpatented claims of the Ebner Company, or just the patented claims?

A. Just the patented claims.

Q. You know, Mr. Wayland, as a matter of fact there are some other claims up there which are unpatented, don't you?

A. I don't know, as a matter of fact, no.

Q. You were just requested and instructed to put on the map the patented property, were you—the patented property of the Ebner Company?

A. I was instructed to put all that I knew to be Ebner property, and as far as the title is concerned all I could go by was the patented claims; I couldn't follow the title of those others very well.

Q. But really the map only shows what you ascertained from the records to be patented property belonging to the Ebner Gold Mining Company?

A. Yes.

Q. I will ask you, Mr. Wayland, in what way are the claims along the Alaska-Juneau flume located—that is, I mean as to the width and the length of them—which way does the length of them run, and which way does the width run—not by directions, but by the flume line?

A. Some are located parallel to the flume, and some cross-wise.

Q. Parallel to the flume?

A. In a general way, yes; parallel to the Alaska-Juneau flume.

Q. Just point that out; I don't get it quite, Mr.

(Testimony of R. G. Wayland.)

Wayland—what is the Alaska-Juneau flume? Is this commencing from where the Gold Creek tunnel is, extending on down through [408—258] this zig zag shape in a southerly direction, called the Alaska-Juneau flume? A. Yes.

Q. Some of the claims are located how did you say with reference to that?

A. Some parallel and some at right angles.

Q. And how are the claims located along what is called “Sea-level Tunnel, Proposed Extension”—does the length run easterly and westerly, or north-easterly and southwesterly?

A. Northerly and southerly—practically northeast and southwest.

Q. And those claims along the other exterior boundary line, how do they run?

A. General direction of the strike.

Q. What direction is that?

A. That is generally northwest and southeast.

Q. Some of them run in what other directions?

A. Most all of them follow that direction, as a general thing—some run practically east and west.

Q. When did you say that you commenced working for the—what was it, the Treadwell or Alaska-Juneau that you have been working for for some length of time?

A. All the companies are under the same management; I began to work for them in 1906.

Q. Did you make any surveys from 1906 up until about 1910 for the Alaska-Juneau Company covering any of the property that is claimed to belong to

(Testimony of R. G. Wayland.)

the Alaska-Juneau Gold Mining Company and embraced within the exterior boundary lines of this exhibit?     A. I think not.

Q. You had charge of their surveying all during that time, or were you acting as a sub part of the time?

A. I was in charge of it from the spring of 1908 on.  
[409—259]

Q. From 1908 up until 1910 you didn't do any surveying upon this property?     A. No.

Q. Well, how far back of 1910, Mr. Wayland, was it that you did anything at all on this property in the way of surveys?

A. I am not sure, but I think in 1909 I made a measurement of the dumps at the mine workings.

Q. That is way up on this map where you have it marked "Mine workings"?     A. Yes.

Q. Then you were not on this property any more until what time in 1910?

A. Until the 27th of August, I think.

Q. Not until the 27th of August. Did you send anyone under you up there prior to the 27th of August to do any surveying?

A. I don't remember; I think not—I might have, I don't remember.

Q. What is your best recollection about that, Mr. Wayland?     A. I think not.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Directing you to the work done by Mr. Lindsay

(Testimony of R. G. Wayland.)

in surveying the flume line, was that prior to the 27th of August, 1910?     A. That work, yes.

Judge WINN.—What work?

Mr. HELLENTHAL.—The work done by Mr. Lindsay in surveying the flume line.

The WITNESS.—That was from Snow Slide Gulch down; I understood you to say the work above Snow Slide Gulch, but Mr. Lindsay ran a preliminary line from Snow Slide Gulch down around the [410—260] beach in July.

Recross-examination.

(By Judge WINN.)

Q. Why didn't you tell me that? I want to ask you a few questions about that. That is the preliminary line that Mr. Lindsay ran some time in July, 1910?     A. Yes.

Q. That was done under your instructions?

A. Yes.

Q. From Snow Slide Gulch about where your new Gold Creek tunnel is down to what place?

A. Down to the point marked "Location of 12,000 ton milling plant."

Q. He ran that over a great deal of property that no right of way had been procured for at that time, didn't he, Mr. Wayland?

A. I cannot say as to the right of way; I don't remember whether there was a right of way procured or not; I don't know that there was.

Q. Do you remember whether or not these claims that run up the Alaska-Juneau flume were located at that time?     A. They were located at that time; yes.



(Testimony of R. G. Wayland.)

Q. At that time—at the time he ran this preliminary line?     A. Yes.

Q. They had not been located prior to that time?

A. No.

Q. Do you know what other property that survey extended over—did it extend over any property belonging to Caro and some other people up there also?

A. I believe it extended over the Caro group.

Q. You knew at that time that there had not been any right of way procured from the Caro people, didn't you?     [411—261]

A. I don't know that there had been or that there had not been; I had never heard of a right of way being procured.

Q. When did you procure that right of way from the Caro people?     A. I don't know.

Q. You didn't have anything to do with that?

A. I didn't have anything to do with that.

Q. Who surveyed the right of way, Mr. Wayland?

A. Mr. Lindsay—the right of way was surveyed; Mr. Lindsay surveyed the flume line.

Q. Well, he surveyed the flume line. When was that survey, do you remember?

A. That was surveyed in July, 1911, the final survey. Two preliminary lines had been run prior to that.

Q. Do you know when the right of way was procured across any of the other property that didn't belong to the company?     A. I do not.

Q. What other property, if any, Mr. Wayland,—you are familiar with this map,—would that survey

(Testimony of R. G. Wayland.)

that Mr. Wayland made pass over, say commencing at the point at Snow Slide Gulch down the creek until you reach these new locations—is there any intervening property there? A. None that I know of.

Q. All located in there, isn't it?

A. I don't know; I don't think so.

Q. Was there any vacant ground in there?

A. I think it was all vacant.

Q. Now, I will ask you, approximately, what is the distance, Mr. Wayland, of the nearest point where this preliminary survey was made from the Mulligan notice, and what is the greatest distance from any point of that preliminary survey to the notice. [412—262]

A. The nearest point is about 800 feet, and the farthest is about 15,000 feet.

Q. Commenced on the Colorado claim, that belongs to the Alaska-Juneau Company, and terminated down about Gastineau Channel? A. Yes.

Q. In the vicinity of your present mill? A. Yes.

Q. There is none of that survey that you know of—that is, there is none of it that you concede was on any of the property belonging to the Ebner Company? A. No, sir.

Q. You don't concede there was any of that property belonging to the Ebner Company?

A. No, sir.

Q. You don't contend that when Mr. Lindsay was up there at this time that you mention that he made any survey further up the creek that the Gold Creek tunnel, do you, Mr. Wayland?

(Testimony of R. G. Wayland.)

A. I don't think so.

Q. You know he didn't, don't you, Mr. Wayland?

A. I guess I do.

Judge WINN.—That is all.

Mr. HELLENTHAL.—Mr. Wayland, I understand you to say that Mr. Lindsay made that preliminary survey in July, 1910? A. July, 1910; yes, sir.

Mr. HELLENTHAL.—That's all.

(Witness excused.) [413—263]

The plaintiff, to further maintain the issues on its part, called as a witness CASH COLE, who, being then duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to the questions as follows:

**Testimony of Cash Cole, for Plaintiff.**

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. Your name is Cash Cole? A. Yes, sir.

Q. You live in Juneau? A. Yes.

Q. Were you residing here in the month of August, 1910? A. Yes.

Q. Do you know the Alaska-Juneau Gold Mining Company? A. Yes.

Q. Do you know where the dam and flume line of the Alaska-Juneau Company are up Gold Creek in the vicinity of Snow Slide Gulch? A. Yes.

Q. Do you know where the Alaska-Juneau bunk-house is built up in the vicinity of Snow Slide Gulch?

A. Bunk-house?

Q. The small bunk-house or cabin that Harri built there? A. Yes.

(Testimony of Cash Cole.)

Q. Do you know where the Jualpa dam is?

A. Yes, sir.

Q. Were you ever employed by the Alaska-Juneau Gold Mining Company, or by Mr. Harri for the Alaska-Juneau Company? A. Yes. [414—264]

Q. When was that, Mr. Cole?

A. It was in August, 1910.

Q. What part of August?

A. It was some place about the 7th—6th or 7th.

Q. The early part of August? A. Yes.

Q. Where were you employed?

A. Carrying lumber from the end of the flume, Jualpa flume, to the cabin.

Q. You mean dam? A. Yes, the dam.

Q. To where the cabin was being built?

A. Yes, sir.

Q. How long did you work there?

A. I have forgotten just how long it was; it was only a day or so, I think.

Q. Who else was there working at that time?

A. Russell Casey, Sandy Hilton, and an old Indian, and there was a couple of carpenters working on the cabin.

Mr. HELLENTHAL.—That's all.

Cross-examination.

(By Judge WINN.)

Q. What day was it, Cash, you say you went up there? A. I think it was about the 6th.

Q. About the 6th? A. Yes.

Q. Were you helping to carry lumber up the hill?

A. I was carrying lumber to the cabin.



(Testimony of Cash Cole.)

Q. The lumber was taken off at the old Jualpa dam?     A. Yes.

Q. And taken out to the place where that cabin was afterwards [415—265] built in the little cove in the side hill along Gold Creek?     A. Yes.

Q. Was there anybody doing any work on the trail when you went up there, Cash?

A. I don't remember anyone working on the trail.

Q. Now, how much of a trail had been cleared out there, Cash, for the purpose of taking the lumber up; can you describe it in some way—whether the brush was thick and high, or how much work had been done on the trail, if any?

A. It was a pretty good-sized trail because we made kind of a stretcher to carry the grub on, and it was four or five feet wide, anyway.

Q. There had been an old wagon-road—

A. That is what it looked like, an old wagon road to start with.

Q. And that had been brushed out?

A. That had been brushed out.

Q. There had been some brushing around the Jualpa dam done, but was there a little scope that there wasn't any brushing necessary?

A. There was a small well-beaten path to start with—just a short one.

Q. Do you remember how far up from the dam, approximately, Cash, that it showed that any late brushing had been done—how far away from the dam, approximately?

A. I don't know; that well-beaten path was well

(Testimony of Cash Cole.)

marked, and I think it was 100 feet from the dam.

Q. And who else, did you say was there, besides yourself?

A. Russell Casey, Sandy Hilton, and an old Indian.

Q. Do you remember what day they commenced work on the cabin, the carpenters?

A. They had the foundation in when I started to work. [416—266]

Q. On the 6th? A. Yes.

Q. And you worked for two or three days?

A. Yes; a day or two.

Q. Do you say two days or one day?

A. I have forgotten; it was one or two days; I think covered a period of two days.

Q. And all you did was to pack lumber while you were there? A. Lumber and grub.

Judge WINN.—That's all.

Mr. HELLENTHAL.—That's all.

(Witness excused.) [417—267]

The plaintiff, further to maintain the issues on its part, called as a witness JAMES DEMPSEY, who, being then duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of James Dempsey, for Plaintiff.**

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. Your name is James Dempsey? A. Yes, sir.

Q. You live in Juneau? A. I do.

Q. Did you live here in the month of August, 1910,

(Testimony of James Dempsey.)

Mr. Dempsey?      A. I did.

Q. Do you know the Alaska-Juneau Gold Mining Company?      A. Yes, I know Mr. Kinzie.

Q. You know where Snow Slide Gulch is, and property in that vicinity?      A. I do.

Q. You know where the little bunk-house or cabin is that was built there near Snow Slide Gulch?

A. I do.

Q. You are by occupation a carpenter, are you not?

A. Yes, sir.

Q. Were you ever employed as a carpenter by the Alaska-Juneau Company in that vicinity?

A. I was; I built that little bunk-house.

Q. You built that little bunk-house?

A. Whatever they used it for.

Q. What month did you build that in, Jim?

A. As near as I can recollect, it was the fore part of August; I should say it was about the 6th that I went up there— [418—268] 6th or 7th.

Q. In what year, Jim?      A. 1910.

Q. Did you have a helper on the job?

A. I had a man by the name of Burg—he is dead now.

Q. Were there others working about there carrying lumber and doing other work?      A. Yes.

Q. How long were you there, Jim?

A. I think I was there about six or seven days.

Q. Until the work was completed?      A. Yes, sir.

Q. While you were there, Jim, did you see any foreigners up there doing any work?

A. I seen some men there going up to do some

(Testimony of James Dempsey.)

work; I couldn't say whether they were foreigners or what they were; they were doing work just above where I was building the bunk-house, a little ways.

Q. Did you see them build anything in the way of a blacksmith-shop?

A. Yes, they had a little shop there.

Q. Further than that you don't know what they were doing?      A. No.

Cross-examination.

(By Judge WINN.)

Q. How far was that blacksmith-shop, Jim, from where you commenced work on the cabin, or where the cabin was eventually built?

A. I should judge now it was about 200 feet, something like that, around a little point.

Q. Around a little point?

A. Yes; and they afterwards built a flume there.

Q. And there was a way to get from the building that you built, was there, to get around the blacksmith-shop? [419—269]

A. There was kind of a trail come around there.

Q. Were they taking up any lumber for the blacksmith-shop while you were there?

A. I don't know whether they had the lumber up there before I went there or not; I couldn't say whether they took the lumber up during the time I was there, but they had a little blacksmith-shop there.

Q. And you saw them pack the lumber up there, and that is the work you saw going on?

A. Yes, sir; and O. M. Harri was up there; he was cutting trails and building trails. O. M. Harri is the



(Testimony of James Dempsey.)

man that employed me; he come down and got me to go up there to go to work.

Q. What time was it that all the lumber was gotten there, Jim—was all the lumber on the ground when you got there?

A. It was there either that day or the next; they were packing when I first went up there.

Q. And Harri was working in and about where the buildings were going to be built?

A. No, it was more on trails; he told me he was working on the trails.

Q. He told you that—you got that entirely from him, did you, Jim?

A. Yes, that is all I know about it, but I believe he was telling the truth; of course, I know he was out there doing this work.

Q. Did you see him do it?

A. Well, no, I didn't see him do it; I was busy building the house.

Q. How long did you work up there?

A. As near as I can remember it was six or seven days, something like that.

Q. Did you complete the house?      A. Yes, sir.

Q. Then you came downtown? [420—270]

A. Came downtown, and next worked for Frank Young.

Q. What size house was that, Jim, do you remember?

A. It was about 14 by 18 feet, possibly 20; it wasn't over 20—I would say it was less than 20.

Q. It was a plain board house?      A. Yes, sir.

(Testimony of James Dempsey.)

Q. Did you fix any bunks in there before you left?

A. No, sir; I left there before the bunks were put in; Harri said he would fix the bunks; he was sleeping on the floor.

Judge WINN.—That's all.

Mr. HELLENTHAL.—That's all.

(Witness excused.) [421—271]

The plaintiff, further to maintain the issues on its part, called as a witness F. M. SIMPSON, who, being then duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. M. Simpson, for Plaintiff.**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name, please.

A. F. M. Simpson.

Q. Where do you live? A. Douglas, Alaska.

Q. What is your business?

A. With the George E. James Company.

Q. What position do you occupy with the George E. James Company? A. Bookkeeper.

Q. You have charge of the books of the George E. James Company? A. I have.

Q. Do you know when an order for lumber was placed with the George E. James Company, to be sent over to Juneau and used in connection with the construction of a small bunk-house which was to be built up in the Basin, along about the year of 1910?

A. I do.

Q. I hand you here these books,—at what time,

(Testimony of F. M. Simpson.)

Mr. Simpson, was that order received by you?

A. In the afternoon of the 2d of August, 1910.

Q. From whom did you receive it?

A. From the head carpenter.

Q. That is the carpenter in charge of the work of the Alaska-Juneau, [422—272] Alaska-Treadwell, and Mexican Mines? A. Yes, sir.

Q. When was that delivered?

A. The next morning.

Q. The morning of the third?

A. The morning of the third.

Q. Third of what month? A. August, 1910.

Q. Where was it sent to?

A. The lumber was taken down to Treadwell and loaded on a scow.

Q. And sent to Juneau? A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Do you know for what specific purpose that lumber was ordered, Mr. Simpson?

A. I don't know that; I can tell what it was supposed to be used for, but I don't know what it was used for.

Q. When people give orders to your mill, are they in the habit of telling you exactly what they are going to do with the lumber?

A. With the Alaska-Juneau and Treadwell Company, they bring requisitions and on the requisition it is stated what it is for.

Q. That is entered from your tag? A. Yes.

(Testimony of F. M. Simpson.)

Q. With the price?

A. We enter the tag just the way the order comes in and the way we deliver it.

Q. And your company put it on scows over there, and then you [423—273] don't know anything about it after that? A. After it is loaded, no.

Q. Where it goes after it leaves there and is delivered at Juneau—where it goes at Juneau you don't know, do you?

A. Certainly don't know anything about that.

Q. It was shipped to Juneau, this lumber?

A. Shipped to Juneau, yes.

Judge WINN.—That's all.

Mr. HELLENTHAL.—That's all.

(Witness excused.) [424—274]

The plaintiff, further to maintain the issues on its part, introduced as a witness W. R. LINDSAY, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of W. R. Lindsay, for Plaintiff.**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. State your name. A. W. R. Lindsay.

Q. Where do you live? A. Treadwell.

Q. What is your business or profession?

A. Engineer.

Q. By whom are you employed?

A. By the allied companies on Douglas Island.

Q. Including the Alaska-Treadwell, Alaska-Juneau, Alaska-Mexican, the Alaska-United?



(Testimony of W. R. Lindsay.)

A. Yes, sir.

Q. In what capacity are you employed?

A. Engineer.

Q. Were you so employed in the year 1910?

A. I was a surveyor in the year of 1910.

Q. Were you also a surveyor in the year of 1909?

A. Yes, sir.

Q. Do you know Mr. Russell Wayland?

A. I do.

Q. At that time you were employed under Mr. Wayland?     A. Yes, sir.

Q. Now, Mr. Lindsay, what, if any, directions did you get from Mr. Wayland looking toward the survey of a flume line—do you know where the Alaska-Juneau dam now is?     [425—275]     A. I do.

Q. And where the Alaska-Juneau mill site is?

A. Yes, sir.

Q. You are familiar with all the Alaska-Juneau properties, in a general way?     A. Yes, sir.

Q. What, if any, directions did you receive from Mr. Wayland in the fall of 1909 looking toward the survey of a flume line from the vicinity of the present Alaska-Juneau dam to the present Alaska-Juneau mill site?

A. The first directions I received were in the spring of 1910.

Q. Spring of 1910?     A. Yes, sir.

Q. What did he direct you to do?

A. I was directed to make a survey for a flume line covering about the ground that is at present covered by the Alaska-Juneau flume.

(Testimony of W. R. Lindsay.)

Q. About the ground that is covered now with the Alaska-Juneau flume—when did you make that survey?     A. I think it was the 11th of July, 1910.

Q. Who assisted you?

A. Mr. Jones and Mr. Tompkins.

Q. Mr. Jones is here now, isn't he?     A. Yes.

Q. And Mr. Tompkins, where is he?

A. He is below somewhere.

Q. Not in Alaska?     A. No, sir.

Q. What did you do in the way of making that survey—did you make it the entire length?

A. I did.

Q. What day was that?

A. 11th of July, 1910.     [426—276]

Q. Mr. Lindsay, previous to receiving the direct orders from Mr. Wayland, you knew that such a survey was to be made?     A. I did.

Q. How long before did you know it?

A. I think the first that I heard of it was in April, 1910.

Q. April, 1910?     A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Where did you say you surveyed that from—from what point to what point, Mr. Lindsay?

A. From a point about Snow Slide Gulch—

Q. From about where the portal of the Gold Creek tunnel is?     A. It was a little above that.

Q. From that on down to the beach on Gastineau Channel?

(Testimony of W. R. Lindsay.)

A. Around above where the present mill is.

Q. Do you know on what ground you made that survey, Mr. Lindsay?

A. I know where it lays on the ground; yes, sir.

Q. Do you know over whose ground you crossed with the survey at that time?

A. At that time I knew there were certain conflicts, but the only group I know now would be the Caro group.

Q. You crossed the Caro group of claims that you know of, and you afterwards adjusted with them to get a right of way across it? A. Yes.

Q. And there wasn't any of these claims near the Alaska-Juneau flume along that particular survey that were located at that time?

A. They were located that day. [427—277]

Q. How many claims did you locate that day, Mr. Lindsay? A. I think seven.

Q. Located them for the purpose of securing a right of way across there for your flume line?

A. They were located along the flume line.

Q. To protect your survey of the flume line?

A. I suppose that was part of the reason.

Q. What property to your knowledge is represented in this long rectangular figure which follows your flume line down just to the east of this letter "A" that is on this Exhibit No. 1 of the plaintiff?

A. I believe that is the right of way purchased over the Caro group of claims.

Q. Who, if anyone, owned this property down near the beach called "Alaska-Juneau Flume" at the

(Testimony of W. R. Lindsay.)

time you made the survey?

A. That property, part of it was located at that time.

Q. Part of it was located by your company at that time?     A. Yes, sir.

Q. From what point on this Exhibit No. 1 did you commence your survey, and where did you end it?

A. Commenced it just above Snow Slide Gulch—

Q. At a point where the portal of your present tunnel is?

A. A little above that; I was directed to begin at a point so that the water could be taken from Gold Creek in that flume line.

Q. And from that point you surveyed it where?

A. Over the—

Q. On down in a southwesterly direction?

A. Practically over the present position of the flume, except it went around the hill instead of going through the tunnel.

Q. Down to what point on this exhibit?

A. Down just over the word "Milling" in the "Location of the 12,000-ton Milling Plant." [428—278]

Q. That part of the survey which is left out on this exhibit extended over these two mining claims (indicating)?

A. No, I don't think it touched those mining claims at all.

Q. Then, at that time you located this property along down on the Gastineau Channel, all of it that is included in the exterior boundary lines as indi-



(Testimony of W. R. Lindsay.)

cated on this map between the lines just above the Alaska-Juneau flume and the sea shore?

A. I didn't locate all that at that time.

Q. How much of it did you locate?

A. I located three claims at that time, I think, in that vicinity.

Q. You never made any other survey of any flume line above Snow Slide Gulch up the creek towards where your dam was completed until September 12th, 1910, did you?

A. We made surveys in there before that day.

Q. I say you never made any survey of any flume line extending up the creek to where the dam was afterwards built until September 12, 1910, did you?

A. That survey ran above Snow Slide Gulch.

Q. Well, how far above Snow Slide gulch?

A. Somewhere around that point, between Snow Slide gulch and where the Alaska-Juneau bunk-house is.

Q. How many feet?

A. I don't remember now; I didn't measure it off; I just ran a level line that day.

Q. Now, you testified, Mr. Lindsay, didn't you, upon the trial of the Basin case, being the conflict over the Parish No. 2 and the Lotta claim—you remember that suit, don't you?      A. Yes, sir.

Q. I will ask you if you didn't testify as follows in that case when Mr. Shackelford was examining you—I am reading from volume 3 of the printed record in that case, which went to the Circuit Court of Appeals—Mr. Shackelford asked you [429—279]

(Testimony of W. R. Lindsay.)

this question: "You live in Treadwell? A. Yes, sir.

Q. What is your occupation? A. Surveyor. Q.

How long have you been in this mining district as a surveyor? A. As a surveyor, two years ago this

summer is the first time. Q. I will ask you if you

were doing any work last summer in the vicinity of the Alaska-Juneau flume and dam below the Ebner

Mining Company mill on Gold Creek? A. Yes, sir."—You remember testifying to that, don't you?

A. Yes, sir.

Q. "Q. Were you employed to go up there, instructed to go up there and locate a flume grade?

A. I was. Q. When did you do this? A. I believe the first survey was made on September 12 for the flume." That is correct, isn't it?

A. I believe I testified that way.

Q. It is correct, isn't it?

A. Yes, for that particular part of the flume.

Q. That is what you did? A. Yes, sir.

Q. "Q. You located both ends of the grade? A. No, it was about 16 feet, I believe, above the present grade." So even on September 12th you didn't locate the grade over which your present flume is built between Snow Slide Gulch and where the dam is, did you? A. No.

Q. When did you locate that grade between Snow Slide Gulch and up where your dam is?

A. A few days after the 12th of September.

Q. It was a week afterwards, wasn't it?

A. I don't know; it was a few days afterwards—I don't think it was a week.

(Testimony of W. R. Lindsay.)

Q. Let me read your testimony: "Q. That is the height of the original tunnel? A. Yes, sir. Q. When did you locate the second grade? A. I think it was about a week afterwards [430—280] approximately; I don't know exactly." You testified to that on the other trial, didn't you?

A. I think I did.

Q. That is true, isn't it?

A. I said a few days, about a week.

Q. You didn't say a week when you testified before, did you? A. I guess not.

Q. The first survey that you made, which was made on about September 12th, 1910, for a flume line to extend from near Snow Slide Gulch up the creek, was intended for a grade to take the water out of Gold Creek near the point where the Mulligan notice was posted, wasn't it?

A. Well, I don't know; the first survey I made was after the upper tunnel was started; I just gave them the grade for the tunnel, the drop of the tunnel and the line.

Q. The first survey that you made was after the upper tunnel was started?

A. Yes; just about the time it was started.

Q. Then, you started on a grade up there before any survey was made for it, did you?

A. There was an approximate grade given before I went up there.

Q. Why did the people work at least a week on this upper tunnel before you lowered it down to another point?

(Testimony of W. R. Lindsay.)

A. I didn't have anything to do with them starting the tunnel; I didn't tell them to start it.

Q. The tunnel was started before you went up to make the survey?     A. Yes.

Q. And how much work was done on it before you went up there?

A. I don't remember; I know they cleaned out the face of the tunnel.

Q. You know they worked about a week on that tunnel, don't you?     [431—281]

A. Something like that, I believe.

Q. What were you doing in the meanwhile while they were working on the tunnel?

A. I was working over in Treadwell part of the time.

Q. The first time you went up there you made the survey of what you supposed to be the grade for the flume line, and then work was carried on about a week before you went up again?

A. That wasn't the first time I went up.

Q. I mean the first time you saw these men working on a tunnel you went away and stayed a week, and then went back again?

A. I went over and told Mr. Kinzie the tunnel was too high, and he sent me back.

Q. Too high for what?

A. To take the water from the place we wanted to take it from.

Q. Under whose instructions was that first tunnel commenced?     A. I don't know.

Q. Then after you told Kinzie this, the men still



(Testimony of W. R. Lindsay.)

worked on this first tunnel and drove it in a distance of ten or twelve feet, didn't they?

A. It was in about that far when I went up there.

Q. It was about a week when you went back again? A. A few days.

Q. You remember the date? A. No, I don't.

Q. When you were up there did you run out any other line for the flume line?

A. I ran out a line to see where the flume would run to—ran a line at that place.

Q. This first tunnel would have touched Gold Creek at about how much further up the creek?

A. It would touch Gold Creek some place about the intake of the old Jualpa dam. [432—282]

Q. How far up the creek was that?

A. Oh, I should say a couple of hundred feet, something like that.

Q. That would be up where the Lotta Claim is, wouldn't it? A. Yes.

Q. On the patented Lotta Claim? A. Yes, sir.

Q. Had you seen the Mulligan notice at that time?

A. I had.

Q. Where would it touch it with reference to the Mulligan notice?

A. Just a little bit below the Mulligan notice.

Q. How many men were they working on that upper tunnel during this interval of a week before you went up there to make another survey?

A. I think there was one shift of three or four men at that time, and after that there were two shifts put on I think.

(Testimony of W. R. Lindsay.)

Q. Then you dropped down with your tunnel which you actually put your flume through about how many feet, vertically?

A. Somewhere about 12 or 16 feet; I don't remember exactly.

Q. That was the tunnel that was ultimately run through which you ran your flume line?

A. Yes, sir.

Q. And takes the water out of the creek through your flume from your present dam? A. Yes, sir.

Q. What work, if any, Mr. Lindsay, did you notice that had been carried on up there besides building the cabin, up until the time that you went back to make the survey upon which your flume line was ultimately built?

A. Oh, a trail from the Jualpa dam to the cabin had been built, and trails up both sides of the creek from the cabin up to the vicinity of the present dam, and that tunnel had been started, and the trails up to the tunnel, and there had been [433—283] some lumber taken up the creek, I believe—I don't remember exactly.

Q. That work had been done up until the 12th, or up until the day you went back to make your actual survey?

A. There had been a blacksmith-shop built, too; that was about that time, I think—I don't remember exactly.

Q. Well, there was a part of the way there, up the creek that you couldn't build any trails, wasn't there, Mr. Lindsay—the banks were so precipitous? You

(Testimony of W. R. Lindsay.)

don't mean there was a continuous trail up both the right-hand and left-hand side of the creek from the point you began this tunnel, do you?

A. I believe there was a trail went up over the bank to get away from those bad places.

Q. There was a trail all the way up on both sides?

A. I believe there was, the way I remember it.

Q. Did you have to build a trail all the way, or did you use the bed of the creek?

A. Trails were made in the bed of the creek; some brush cut out, levelled off and steps cut.

Q. There wasn't much clearing up to do in the bed of the creek, would you say?

A. Oh, in some places there was.

Q. You know there is quite a space up there that there wouldn't be any clearing necessary at all, in the bed of the creek?

A. There were places that there wouldn't be any clearing to be done; yes, sir.

Q. You don't remember the exact date you did go up there to survey the grade upon which your flume was built going through this lower tunnel?

A. I remember it was a few days after the 12th, but I don't remember the exact date.

Judge WINN.—That is all. [434—284]

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Do you know the man that gave the preliminary lines by which they started the first tunnel, Mr. Lindsay—do you know Mr. Hawley?

(Testimony of W. R. Lindsay.)

A. Yes, I know Mr. Hawley.

Q. Do you know that he is the man that did that?

A. I understand he did, but I am not certain he did.

Q. Where is Mr. Hawley now, Mr. Lindsay?

A. I believe in Seattle.

Q. Were there grade stakes set at that time when you first went up there, at the mouth of the tunnel?

A. There was a stake there; I didn't set it; I didn't know it was a grade stake.

Q. Part of the tunnel had been run when you went up there?      A. Yes, sir.

Q. And you went over and told Mr. Kinzie is was too high?      A. Yes, sir.

Question by Judge WINN.—Part of the upper tunnel had been run when you went up there?

A. Yes, sir.

(Questions by the COURT.)

Q. Mr. Lindsay, did you have anything to do with the making of that map, Plaintiff's Exhibit No. 1?

A. No.

Q. I understand you to say that your surveyed a grade for the flume up in the vicinity of the Mulligan notice?

A. I went up there and that tunnel had been started.

Q. I am not talking about the tunnel, I am talking about the survey.      A. Yes.

Q. How far from the Mulligan notice was the end of your survey? [435—285]

A. It was very close to the Mulligan notice.

Q. What do you mean by very close?



(Testimony of W. R. Lindsay.)

A. Not over 50 feet.

Q. Is that the best idea you can give me as to how far from the Mulligan notice it was?

A. When I found it was not in the right place I didn't pay any more attention to it; I ran a line up and found it wasn't in the right place, and I didn't pay any more attention to it after that.

Q. Did you survey the grade for the flume as it was afterwards constructed? A. Yes, sir.

Q. How far from the Mulligan notice was the end of that grade for the flume as it was actually constructed?

A. I can show you on the map. (Plaintiff's Exhibit No. 1.)

Q. Very well.

A. It was at the point marked "Alaska Juneau dam" on the map.

Q. That is where your survey ended? A. Yes.

The COURT.—That is all.

# Recross-examination.

(By Judge WINN.)

Q. Would you take your rule and say how many feet, according to your map, that is up the creek from the dam where you constructed it?

A. About 200 feet.

Q. From what point?

A. To the Mulligan notice.

Q. And the upper tunnel was made with the expectation of taking the water out of Gold Creek at a point no further down the creek than the figure 1

(Testimony of W. R. Lindsay.)

here, which represents the Mulligan notice, which would have struck within 50 feet of the [436—286] place where the Mulligan notice was posted?

A. If the flume had been constructed on that grade it would have struck about that place.

Q. That would have been about how many feet above the lower side line of the Lotta Claim?

A. It would have been about 200 feet.

Q. And on that claim? A. Yes, sir.

Judge WINN.—That is all.

Mr. HELLENTHAL.—I don't like these questions of Judge Winn's about the lower side line of the Lotta claim, and I want to ask this witness one question about it.

Q. At that time did you make any effort to find the lower side line of the Lotta claim?

Judge WINN.—To save a long examination on that proposition, your Honor, I will withdraw from the record all of that part of the testimony of Mr. Lindsay which was brought out by myself on cross-examination that pertains to the lower side line of the Lotta claim, or as to whether or not the notice known as the Mulligan notice was on the Lotta Lode claim.

Mr. HELLENTHAL.—All right; that is all, Mr. Lindsay.

(Witness excused.)

(Whereupon court adjourned until 2 P. M.)  
[437—287]

(Testimony of W. R. Lindsay.)

AFTERNOON SESSION.

July 25, 1914, 2 P. M.

The plaintiff, to further maintain the issues on its part, recalled as a witness for further cross-examination, W. R. LINDSAY, who, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of W. R. Lindsay, for Plaintiff  
(Recalled).**

Cross-examination.

(By Judge WINN.)

Q. Mr. Lindsay, you testified in this case on the application for a preliminary restraining order, did you not? A. I think so.

Q. I will ask you with reference to the survey which you claim you made on September 12, 1910, of the upper tunnel which you were testifying concerning this morning, and the grade that would fit in with the upper tunnel, if you didn't testify in regard to that survey which lies between some point just above your present dam and some point down near the Gold Creek tunnel as follows: "Q. When were you on the ground again to survey after the time you were there in the latter part of August? A. I was there on the 12th of September. Q. What did you do there at that time? A. I ran out a grade for a flume line and a grade for the beginning of a tunnel to run under Snow Slide Gulch to carry water under Snow Slide Gulch to avoid the snow slides." Did you tes-

(Testimony of W. R. Lindsay.)

tify to that on the application for the preliminary restraining order in this case?

A. I don't remember whether I testified to those exact words, but I suppose I must have. [438—288]

Q. You don't doubt but what this report of your testimony is true, do you?

A. It sounds all right to me.

Q. "Q. You know where there are two tunnels, don't you? A. Yes, sir. Q. The two tunnels started a little above there—10 feet or so? A. Yes, sir. Q. How far is that upper tunnel on the ground? A. The way I remember, about 10 feet—8 or 10 feet." Now, this testimony seems a little mixed there—didn't you testify on that trial that that upper tunnel was driven in some 8 or 10 feet?

A. I don't remember whether I testified to that or not; I think it was in about 8 or 10 feet.

Q. That is a fact, isn't it? A. Yes, sir.

Q. I will ask you if on cross-examination in that case, pertaining to this same matter, if you didn't testify as follows: "Q. What time did you say that your surveyed out that upper tunnel which is parallel to the tunnel where the flume lies there? A. September 12, 1910. Q. Did you superintend the running of that upper tunnel? A. I simply gave them the grade and direction." Did you testify to that?

A. Yes; that wasn't the starting grade, though; that was the grade the tunnel was run on after it was started.

Q. Listen, Mr. Lindsay, do you want to modify what I have just read you that you testified to?



(Testimony of W. R. Lindsay.)

A. There might be a little misunderstanding there.

Q. "Q. What time did you say you surveyed out that upper tunnel which is parallel to the tunnel where the flume lies there? A. On September 12th, 1910." That is correct, isn't it?

A. Yes. [439—289]

Q. "Q. Did you superintend the running of that upper tunnel? A. I simply gave them the grade and the direction." That is right, isn't it?

A. There might be a little misunderstanding as to what that tunnel meant, it might be the point from where they started.

Q. I just simply asked you if you didn't testify as I have read to you on that previous hearing?

A. I believe I did.

Q. I will ask you also if you didn't testify as follows: "Q. How long did it take them to run it? A. Just about a week later when I went up to change the grade they were all through the tunnel and the work was stopped at that time." Did you testify to that? A. I think so.

Judge WINN.—That is all.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [440—290]

The plaintiff to further maintain the issues on its part, called as a witness GEORGE JONES, who, then being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of George Jones, for Plaintiff.**

**Direct Examination.**

(By Mr. HELLENTHAL.)

Q. Your name is George Jones?      A. Yes.

Q. You live in Juneau?      A. I live in Treadwell.

Q. You are the superintendent in charge of the operations of the Alaska-Juneau Gold Mining Company?      A. Yes, sir.

Q. How long have you been connected with the Alaska Juneau Gold Mining Company, Mr. Jones?

A. Since 1910.

Q. Since 1910. Were you connected with the Alaska-Juneau Gold Mining Company in the month of November, 1910?      A. I was.

Q. Are you familiar with the properties of the Alaska-Juneau Gold Mining Company in a general way?      A. I am.

Q. You know the location of the Alaska-Juneau dam on Gold Creek?      A. Yes.

Q. And the situation around and about Snow Slide Gulch?      A. Yes.

Q. The character of the ground in that locality?

A. Yes, sir. [441—291]

Q. The location of the compressor plant in that neighborhood?      A. Yes.

Q. The Gold Creek tunnel?      A. Yes.

Q. The flume line and tramway leading to the beach?      A. Yes.

Q. And with the milling plant situated on the beach?      A. Yes.

(Testimony of George Jones.)

Q. You are a mining engineer by profession, Mr. Jones?     A. Yes.

Q. Now, Mr. Jones, when were you first upon the ground belonging to the Alaska-Juneau Company in the vicinity of Snow Slide Gulch in connection with the work carried on there looking toward the appropriation of the water of Gold Creek?

A. In July, 1910.

Q. July, 1910?     A. Yes, sir.

Q. What part of July?     A. On the 11th.

Q. On the 11th day of July. Who was with you at that time?     A. Mr. Lindsay and Mr. Tompkins.

Q. What did you do at that time in that connection—in connection with the work looking towards the appropriation of that water?

A. We located seven claims between the mill site and the Alaska-Juneau dam.

Q. What, if anything, did you do in the way of surveying for running a flume line?

A. That was the purpose of this survey; we located the 450 contour, and located 350 feet on each side of that contour at that time.

Q. You surveyed the flume line along the 450 contour?     A. Yes.

Q. And the claims were located along that line?  
[442—292]

A. They were.

Q. When were you next upon that ground, Mr. Jones—that survey, where did that extend, Mr. Jones?

A. It was from about the portal of the water tun-

(Testimony of George Jones.)

nel down to about the present mill site,—that is, the tunnel built under Snow Slide gulch.

Q. That is, it commenced at a point—where was the point where you commenced with reference to the portal of the water tunnel and the Alaska-Juneau dam? A. It was between the two.

Q. Between the two, and extended from there along the line—along what line as it is now indicated on this map? (Plaintiff's Exhibit No. 1.)

A. Where the present flume line goes, only it didn't go through the hill.

Q. The survey extended along the line of the present flume grade, except that it went around Mt. Roberts? A. Yes, where the old trail now is.

Q. Where the old trail is now? A. Yes.

Q. And to where did it go?

A. Well, just about up there where the mill site is.

Q. In the neighborhood of the Alaska-Juneau Company's present mill site? A. Yes.

Q. That route was afterwards changed by tunneling through Mt. Roberts instead of going around it?

A. Yes.

Q. Now, when were you next on the ground in connection with the operations carried on there looking towards the diversion of the water?

A. November of the same year.

Q. November of the same year—1910? [443—293] A. Yes.

Q. What were you doing there in November, 1910?

A. Completed the flume, put in the pipe-line, put up the compressor and ran the compressor.



(Testimony of George Jones.)

Q. You were in charge of the work?      A. Yes.

Q. When did you get the flume completed as far as the compressor?

A. On the 16th, I think it was, of November.

Q. 16th of what month?      A. November, 1910.

Q. When, if at all, did you turn the water through the flume and apply it to use on the compressor?

A. On the 17th.

Q. On the 17th, then, you had the flume all completed from the compressor situated at Snow Slide gulch to the intake?      A. Yes.

Q. That is the same intake that is there now—the same dam?      A. Yes.

Q. And the same flume?      A. The same flume.

Q. Now, on the 17th of November, Mr. Jones, what did you do, if anything, in the way of diverting the water from Gold Creek and applying it to use?

A. We turned it into the pipe-line and started a little compressor we had there.

Q. Turned it into the flume, didn't you?

A. It had been running in the flume for some time before that, but we didn't turn it into the penstock or the pipe-line until the 17th.

Q. Then you applied the water to use in driving that compressor?      A. Yes.

The COURT.—17th of November?

A. November, 1910. [444—294]

Q. From the 17th of November, 1910, up to the present time you have been connected with the Alaska-Juneau Company continuously?

A. I have.

(Testimony of George Jones.)

Q. Has there been any time during that time when the water first applied to use by you on November 17, 1910, has not been used in connection with the mining operations of the company?

A. No, there has not.

Q. The entire capacity of your flume has been used during that entire period for some use in connection with your operations?     A. It has.

Q. And is now being so used by you?     A. Yes.

Q. Where is the water now being used, Mr. Jones?

A. It is being used on the compressor up at what we call the "Big Switch" up there, and is used in the mills.

Q. Have you use for all the water appropriated?

A. Yes.

Q. Could you use any more water if you had it?

A. Yes, I think we could.

Q. Will you have use, in connection with your operations, for this water in the future—from now on will you need it in connection with your operations?     A. Certainly will.

Mr. HELLENTHAL.—Of course. That is all, you may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Now, Mr. Jones, the survey that you spoke of which was made on July 11th, I think, 1910, extended from a point up near Snow Slide gulch about how near the mouth of your present [445—295] Gold Creek tunnel?

(Testimony of George Jones.)

A. Oh, I suppose it was about—I couldn't say exactly, but I would say it was four or five hundred feet back of that.

Q. Further up the creek? A. Yes.

Q. You evidently hadn't decided at that time where you were going to put in the Gold Creek tunnel, had you? A. At that time?

Q. Yes.

A. I don't remember exactly; I don't think it had been definitely decided at what point we would start driving.

Q. Then, you did commence your flume line, you say, about four or five hundred feet further down the creek that the initial point you started at for your July survey?

A. We have the tunnel there at the present time.

Q. How far is the tunnel which you said you made the initial point up the creek to commence this survey from your air-compressor that was afterwards installed? A. You mean the old compressor?

Q. I mean the first you installed at Snow Slide gulch near the portal of your Gold Creek tunnel?

A. Oh, I should say it was two or three hundred feet back of that where they first started that line.

Q. That is, the air-compressor was about two or three hundred feet further down the creek than where you made that initial point to commence that survey?

A. Yes, I think it was about that distance.

Q. How far is your penstock that leads your water

(Testimony of George Jones.)

down from your flume to your air-compressor from that initial point?

A. Oh, about the same distance.

Q. What do you say you made your initial point from?

A. We located the 450 contour and we tried to follow that as close as we could for the location of this flume. [446—296]

Q. What do you mean by the 450 contour?

A. Why, it is a line, an imaginary line that is on the same elevation or grade with the topography of the country.

Q. Now, then, you said you expected to take the water over the line that you surveyed out also down to where your present mill is?

A. Yes, that was the idea.

Q. Did you know at that point how far up the creek you would have to go to touch Gold Creek to bring the water around to that elevation, at that time?

A. I didn't at the time, no.

Q. You hadn't made any survey to ascertain that either, Mr. Jones, had you?     A. I did not.

Q. You know your company hadn't, don't you?

A. I don't know.

Q. So far as you were concerned, you just went up there and arbitrarily made that the initial point to commence this survey down to where you contemplated to build a mill near Gastineau Channel?

A. Yes, the idea was to locate and bring a line down that 450 contour.

Q. You know that your company had never, prior



(Testimony of George Jones.)

to that time, put up any water location notices on Gold Creek, don't you?

A. I wasn't familiar with that at that time at all.

Q. You have ascertained that since, then, that they didn't have any water locations on that creek at that time at all, haven't you, Mr. Jones?

A. I don't think they had, at that time.

Q. Now, did this survey line that you made at that time run across any of the Ebner Gold Mining Company's property that you know of?

A. No. [447—297]

Q. How far was it, and about how far from that initial point of this survey down towards Juneau, did you commence locating any claims?

A. We started in—I couldn't say exactly how far it is; probably six or eight hundred feet.

Q. Now, let us refer to Plaintiff's Exhibit No. 1, which is the map which has been identified by Mr. Wayland, your surveyor, and you say you were up there in 1910 and are now acquainted with the property of the Alaska-Juneau Gold Mining Company—I will ask you, taking as a starting point the black rectangular small figure which is just below "Gold Creek Tunnel," how far did you come towards Juneau before you commenced locating any property?

A. Oh, from that point I should say it was 200 feet, 300 feet, somewhere along there.

Q. On what mining claim of the Alaska-Juneau did you establish that initial point—I mean the

(Testimony of George Jones.)

upper initial point—for this survey that you made in July, 1910?

A. I think that it was on the lower part of the Colorado.

Q. Did you make any examination at that time to ascertain as to whether or not it was, Mr. Jones?

A. No; I was not familiar with it at that time.

Q. You were not particularly familiar with the boundary lines in that vicinity at that time?

A. I was up in the upper Basin at the time.

Q. Who was with you when you commenced that survey? A. Mr. Lindsay and Mr. Tompkins.

Q. You left that matter mostly with them, did you, as to where to commence, Mr. Jones?

A. Yes; Mr. Lindsay was more familiar with it than I was.

Q. Now, you say you located some claims a certain distance below this black spot on the map—how many, and what, claims did you locate at that time? [448—298] A. Located seven claims.

Q. So you could procure a right of way across for your flume line? A. Yes.

Q. What is the name of those claims?

A. Bear claims.

Q. Number 1, 2, 3, and so on?

A. Consecutively from 1 to 7.

Q. And they are included in this space near the Alaska-Juneau flume? A. Yes, they are the ones.

Q. Did they extend down as far as the commencement of this long rectangular narrow strip near the letter "A" on the west side of this exhibit?

(Testimony of George Jones.)

A. Yes, sir,

Q. Then that right of way—Further on you surveyed down, then across the property of Caro and some one, didn't you, Mr. Jones? A. Yes.

Q. You hadn't, at that time, procured any right of way from them? A. Not that I know of.

Q. Then, after you left the Caro property, what property did you enter further on down near the words just above Gastineau Channel, written "Alaska-Juneau Flume"?

A. I don't know as we entered upon any.

Q. To what point on this map or plat did you extend that survey at that time, Mr. Jones?

A. Just about to the "N" in "Gastineau," somewhere along there.

Q. Do you know, Mr. Jones, where there is a tunnel just above what you term your water tunnel near Snowslide Gulch, that is parallel to this water tunnel, but up the hill a little further? A. Yes.

Q. At what exact point in relation to those two tunnels did you establish your initial point, do you remember?

A. No, I don't remember; that was before those tunnels were in there. [449—299]

Q. Now, then, Mr. Jones, I think you testified when Mr. Hellenthal asked you a question, if ever since you first put some of this water to use up at your compressor at Snowslide Gulch, you have continuously since that time used the water of Gold Creek,—there was a period last winter that you

(Testimony of George Jones.)

didn't use it, wasn't there—you overlooked that?

A. There was one period that the compressor was closed down for about four weeks.

Q. Did you have anything to do with running this compressor in 1911 at Snowslide Gulch?

A. In the fall of 1911 I did.

Q. While you were there, did you have to close down on account of the want of water out of Gold Creek?

A. When we had the small compressor we didn't, no.

Q. You were not closed down during the fall of 1911 and winter of 1912 at all on account of a shortage of water?

A. There may have been a period in there, I forget exactly; there was probably a period when we closed down at that time, waiting for the freeze to thaw out again.

Q. What capacity in cubic feet was your small compressor that you spoke of?

A. I should judge not more than 200 feet.

Q. What is the one you afterwards installed at Snowslide Gulch?

A. About 700 feet.

Q. It takes the full capacity of your flume there to run this other one that you have installed, does it not, Mr. Jones?

A. It does not.

Q. It doesn't take the full capacity of your flume to run your air compressor that you have in there now?

A. No.

Q. What proportion of the water in that flume



(Testimony of George Jones.)

does it take to run both sides of that air-compressor?

A. Oh, it would take a little less than  $\frac{1}{3}$ , I think.  
[450—300]

Q. A little less than  $\frac{1}{3}$  of the capacity of that flume? A. I think so—about  $\frac{1}{3}$ .

Q. If Mr. Kinzie says it takes it all, is he mistaken about that?

A. The first part of the flume at full capacity?

Q. I mean the full capacity of the flume—the water it carries right there at that point.

A. I think he is a little mistaken, if that flume is running full capacity.

Q. In 1912, did you run that compressor in the winter? A. 1912?

Q. Yes. A. Yes, it was running in 1912.

Q. Was there any time during that season you were closed down on account of shortage of water?

A. Several times we had lots of trouble.

Q. Did you have water all that winter to run both sides of your compressor?

A. We had enough for jacket water.

Q. I mean to run your compressor, Mr. Jones; I mean to run your air-compressor; I mean to use water-power and not use electricity?

A. No, we didn't use electricity.

Q. If I am mistaken about that term, how was it in 1911—I mean, of course, whether you had power enough to run the compressor?

A. We only had the small compressor then.

Q. Did you use the water power to run that all winter? A. Yes.

(Testimony of George Jones.)

Q. What is your head there, Mr. Jones?

A. I think it is about 80 feet, if I remember correctly.

Q. Your new air-compressor that you put in there, or the big one that you put in there, one side of it is electrically driven, isn't it? A. No.

Q. It isn't? [451—301] A. No.

Q. You say that the one that is up there now—that you never applied electricity to run that air-compressor?

A. No, I didn't say that; we could connect the belt any day by electricity if we want to.

Q. You have been running part of it by electricity?

A. Oh, yes.

Q. And you could connect it up to run both sides by electricity? A. The motor is not big enough.

Q. If you had a motor big enough, you could, couldn't you? A. Yes, sir.

Q. How much water do you calculate it took for jacket water to run that small compressor?

A. For everything?

Q. No, for jacket water.

A. It didn't take very much for jacket water for that small compressor.

Q. Could you estimate it in any way so the Court could get an idea of it?

A. I think it wouldn't take more than 20 or 30 inches.

Q. Miner's inches? A. Yes.

Q. How much for jacket water for the other air-

(Testimony of George Jones.)

compressor that you afterwards installed and now have installed?

A. About two and one-half times as much—three times as much probably.

Q. Somewhere between 80 and 100 miner's inches, would you say? A. Might be.

Q. I don't believe Mr. Hellenthal asked you anything about this new air-compressor that you have installed this side of Snow Slide gulch, did he?

A. No, he didn't. [452—302]

Q. Then I will not ask you anything about it. Now, then, you say you have been using the full capacity of your flume as it carries the water at your mill down here on the beach, for how long a time?

A. Well, we started in last summer, the early part of the summer.

Q. How much of that water, Mr. Jones, do you put through your mill; when I say put through your mill I mean in treating your ores?

A. Oh, at the present time we are crushing about 550 tons a day, and it takes about, probably, between 12 and 15 tons of water, somewhere around there.

Q. What fractional part of the capacity of the flume do you estimate that this many tons of water will amount to?

A. I don't know, exactly, what it is; what overflow we have—the small overflow which we have we need to wash the tailings down.

Q. Do you contend that all the water that has been running to waste, as shown on Defendant's Exhibit

(Testimony of George Jones.)

“A” for identification, is necessary to wash away your tailings?

A. Yes, we need all the water.

Q. You have been letting it run in that place as indicated in this photograph until it has cut quite a channel through the rock and dirt there, hasn't it?

A. Nearly all bare rock.

Q. What proportionate part, Mr. Jones, for the last several months, of that water have you had running out at the end of your flume for the purpose of washing away your tailings?

A. That is pretty hard for me to say; I couldn't say exactly.

Q. Do you think it would be as much as one-half the capacity of your flume?

A. On occasions, it may have been. [453—303]

Q. Then you don't know what fractional part of the capacity of the flume, and water, that you have been using down through your mill?

A. No, I couldn't say.

Q. I think you answered the question to Mr. Helenthal that you could use more water there now, Mr. Jones—what would you need more water up there for?

A. We have 10 more stamps and when they are ready we could use the water there, and we have quite a bit of sluicing there to do yet.

Q. You have got enough water to do the sluicing, haven't you? A. No, sir.

Q. Haven't done any sluicing for how long?



(Testimony of George Jones.)

A. Haven't done any sluicing now for probably two months.

Judge WINN.—That's all.

Mr. HELLENTHAL.—Just one question, Mr. Jones: Before coming down to the Snow Slide gulch workings, in November, 1910, you had charge of the operations at the mine itself, didn't you?

A. I did.

Judge WINN.—You mean the mine of the company away up in the upper basin, which is indicated on this Exhibit 1 of the Plaintiff, "Mine Workings"?

A. Yes.

The COURT.—Mr. Jones, referring to defendant's Exhibit "A" for identification, that line of boxes, as it looks like, is that where you are washing the tailings through? A. Yes.

(Witness excused.) [454—304]

Mr. HELLENTHAL.—I would like to offer the original complaint in case 803-A, the Ebner Gold Mining Company against the Alaska-Juneau Gold Mining Company, in which the defendant herein asks for an injunction restraining the plaintiff herein from diverting the waters of Gold Creek. The complaint is sworn to by B. M. Behrends, Secretary of the Ebner Gold Mining Company. (Whereupon said complaint was received in evidence and marked Plaintiff's Exhibit No. 26.)

Mr. HELLENTHAL.—Now, I would like to offer certain parts of the transcript in the case of the United States of America against Angus Mackay, E. J. Hunsaker, Al Black and Ed. Sykes. The pur-

(Testimony of George Jones.)

pose of offering this is the admission by these people who state that they were employed by the defendant in this case, or were connected with the defendant in this case, in hindering and delaying the plaintiff in this case from making a diversion of the water at a point where the diversion is claimed to have been made. That transcript is certified to by the official reporter. (Objection sustained. Not received in evidence.) [455—305]

**Testimony of R. A. Kinzie, for Plaintiff.**

R. A. KINZIE, a witness recalled on behalf of the plaintiff, having been previously sworn, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Kinzie, since leaving the stand have you calculated those figures about which I asked you when you were on the stand? A. I have.

Q. How much money did the Alaska-Juneau expend in connection with the work looking towards the appropriation of the water of Gold Creek, in the month of August, 1910?

A. In the month of August, 1910, the amount of \$368.02 was expended.

Q. \$368.02 was the expenditure during that month in connection with that work? A. Yes.

Q. How much was expended during the following month, the month of September, 1910, in connection with that work?

A. The amount of \$346.98 was expended, but this

(Testimony of R. A. Kinzie.)

amount does not include the contract work of Hendrickson.

Q. That included the amount paid out for ordinary labor. How much was expended in that same connection in the following month, the month of October, 1910?

A. In October, 1910, \$3,328.43 was expended.

Q. How much was expended by the Alaska-Juneau Company in the month of November, of the same year, in connection with that work?

A. In November, \$4,996.93 was expended.

Q. Now, that was the month, I think, you applied the water to use on the compressor?

A. The water was applied to use on the 17th of November.

Q. You haven't the totals of the monthly expenditures, but how much is the total expenditure up to date in connection with [456—306] the appropriation of water under your Mulligan notice, or otherwise, as you have appropriated or diverted the water out of Gold Creek—what is the total amount expended in that connection?

A. The amount of money expended for the water work alone is \$98,836.14.

Q. That is the exact total up to date?

A. Yes, sir.

Mr. HELLENTHAL.—That's all.

Cross-examination.

(By Judge WINN.)

Q. That includes the expense of building your dam, and also the expense of building your flume from your

(Testimony of R. A. Kinzie.)

dam down to your mill on the beach? A. Yes.

Q. Just includes that item of expense alone?

A. Includes the dam and the waterway from the dam to the point where it was used on the mill site.

Q. What is the total of the amount you say you expended until you got it down to your air-compressor at Snow Slide Gulch? A. It is \$9,043.36.

That was up to the time you claim you applied it to use down at your Gold Creek tunnel?

A. Yes, that is for the flume and dam up to the time it was applied to use.

(Witness excused.)

(Whereupon court adjourned until Monday morning.) [457—307]

#### MORNING SESSION.

July 27, 1914, 10 A. M.

#### **Testimony of R. G. Wayland, for Plaintiff (Recalled).**

R. G. WAYLAND, a witness recalled on behalf of the plaintiff, being previously sworn, testified as follows:

#### Direct Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Wayland, you have been sworn, haven't you? A. Yes.

Q. Mr. Wayland, I call your attention to this map marked for identification, Plaintiff's Exhibit No. 26—will you look at that, please,—who made that map?

A. I did.

Q. Does that correctly show the matters and things delineated upon it, Mr. Wayland? A. It does.



(Testimony of R. G. Wayland.)

Q. Did you consult the records to find out the dates of those various locations, and other data shown on the map in the legend in the corner? A. I did.

Q. Are those dates as shown there correct?

A. They are.

A. The location of the Bear claims and the point where the Mulligan notice is posted and the point where the Alaska-Juneau dam is, are they *are* correctly delineated? A. They are.

Q. This indicates when the claims have gone to patent, and you have given the date of patent? (Indicating.) A. Yes, sir.

Q. And where they are not patented, you have given the date of the location and recording?

A. Yes. [458—308]

Q. And this other column shows the names of the various claims? A. Yes, sir.

Q. And then the claims are shown on the map?

A. They are shown by letters, and the name of the claim is opposite the letter.

Q. And they are all in their correct positions?

A. Yes, sir.

Mr. HELLENTHAL.—I offer the map in evidence.

(Whereupon said map was received in evidence and marked Plaintiff's Exhibit No. 26.)

Judge WINN.—No cross-examination, your Honor, on that subject.

(Witness excused.)

Mr. HELLENTHAL.—That is our case in chief. [459—309]

(Testimony of Herman Tripp.)

DEFENSE.

The defendant, to ~~further~~ maintain the issues on its part, introduced as a witness HERMAN TRIPP, who, then being sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Herman Tripp, for Defendant.**

Direct Examination.

(By Judge WINN.)

Q. Mr. Tripp, what is your first name, and where do you reside?

A. My name is Herman Tripp; I reside in Juneau.

Q. What is your business, Mr. Tripp?

A. My business has been mining the biggest part of my life.

Q. I will ask you, Mr. Tripp, if you also have done a good deal of prospecting in the way of making locations of mining claims, and also prospecting and examining property in Alaska?

A. Yes, I have done a great deal of that kind of work here.

Q. Have you ever run any milling plant in Alaska?

A. I have.

Q. Where was that, Mr. Tripp?

A. I had charge of the opening up and developing of the Sumdum mines, or the Sumdum Chief mine, as it was called at that time.

Q. How long were you actively engaged in the running of that mine?

A. Between seven and eight years; I don't remember exactly now.

(Testimony of Herman Tripp.)

Q. I will ask you, Mr. Tripp, if you are generally acquainted with the property that is known as the Ebner Gold Mining Company's property, near Juneau in Silver Bow Basin?     A. I am, yes.

Q. When did you first go up on that property or know anything of it?

A. I don't remember now, it has been a long time.

Q. Could you tell approximately, within a year or so, Mr. Tripp?

A. I was there before Thane had anything to do with it quite a [460—310] while; I went there first in 1904 and made an examination of the property, and had been there several times before that, through the works.

Q. And as far back then as 1904 you became partially acquainted with the Ebner Company's holdings?     A. Yes.

Q. In 1904 what was going on on this property, Mr. Tripp?

A. Well, there was a proposition on hand at that time to sell the property, or have it sold.

Q. Was that the occasion of your examination at that time?

A. That was the reason that I was there at that time; yes, sir.

Q. I will ask you if there was any milling of ore going on at that time on any part of the Ebner holdings, and when I say Ebner holdings I wish the record would show that I mean the Ebner Gold Mining Company?

A. I don't remember whether there was at that

(Testimony of Herman Tripp.)

time; it seems to me it was in the winter time that I was there making that examination, and whether they were running at that time I cannot say.

Q. Was there a stamp mill on the property?

A. There was.

Q. When did you say that Thane ran the mill that is on the property?

A. I didn't say because I can't remember just exactly when it was; it must have been about 1902, or something of that sort.

Q. What sized stamp mill was it?

A. 15-stamp mill.

Q. Where was the water obtained for the running of the mill?     A. Out of Gold Creek.

Q. About what distance above the mill that had the 15 stamps in it?

A. About 3,000 feet or thereabouts.

Q. Up the creek?     [461—311]     A. Yes, sir.

Q. Well, I will ask you with respect to where the water has been put through the new flume, where were they getting the water at that time?

A. Getting the water out of the same dam.

The COURT.—Now, what do you mean by the new flume?

A. I mean the high line flume on the hillside.

The COURT.—Of which company?

Judge WINN.—The Ebner Company.

Q. Do you remember what there was on the property at that time besides the mill, in the way of buildings or air-compressors, and so forth?

A. There was an air-compressor on the property



(Testimony of Herman Tripp.)

located down the creek about five or six hundred feet, or thereabout, maybe a little further distance than that in Gold Creek.

Q. Is that the same air-compressor, that is there now?     A. It is there, I believe, now.

Q. Now, Mr. Tripp, when next did you have anything to do with this property in the way of going over it to ascertain its value, or to make a general examination of it?

A. In 1908 I was employed by a company, of which F. L. Underwood was the president, that was then known as the California-Nevada Copper Company, and I was employed to look over the whole field between the Alaska-Juneau ground and the Dora group, and all of the mines along on that belt, including Mt. Juneau.

Q. You say that you were employed to do this—I will ask you if you did take up the examination of the property at that time.     A. I did.

Q. What was the purpose of this examination, Mr. Tripp?

A. The purpose was to determine where the ore bodies were and ascertain their value, and in a general way size the properties [462—312] up for a mine.

Q. How long did you continue this work of exploring and examining the properties?

A. Through 1909 and part of 1910.

Q. Did you employ anyone to assist you in this work?

A. I had a great many men working for me at dif-

(Testimony of Herman Tripp.)

ferent times—not a great many, I had several though.

Q. In 1908 or '9?

A. 1909; most of my work was done that I would have required men for in 1909.

Q. Was there a man by the name of Oscar Harri on the property at that time as watchman?

A. There was.

Q. During the year of 1909 about how many men—that is, the highest number of men— did you have in your employ at any one time?

A. Oh, I had nine or ten—eight or nine, something of that sort; I don't remember exactly.

Q. Did you have a man by the name of Mr. Wol- lenberg with you?      A. I did.

Q. In what capacity was he serving with you?

A. He was doing the assaying, surveying and map- ping.

Q. I wish, Mr. Tripp, you would just outline to the Court in a general way just what this work that you and these parties who were helping you during this time consisted of?

A. We were sampling all the ore bodies that were not pretty well developed, everything in the shape of an outcrop; and we surveyed the ground and made an assay map at every place that was sampled, marked as to the value of the ore and where it was on this map; we had contour lines all around the Gold Creek side hills and connected them up with various mineral posts, patented claims, and so forth, and gathered data for a large map to cover the whole property. [463—313]

(Testimony of Herman Tripp.)

Q. To what end and purpose was this work being conducted, Mr. Tripp?

A. The proposition was that he calculated to make a mine there, and was preparing the way to work it in a systematic and business-like manner, and to find the best way, of course, to work it.

Q. This work you were doing there was necessary for that purpose, was it? A. Yes, sir.

Q. How long did you say that you continued that; approximately how many months, or for what length of time?

A. I had the most of my work done by men during 1909.

Q. And you were in control of the property up there for that purpose up until about what date, Mr. Tripp?

A. Until the time *the* Bent and his party arrived, which was in the later part of July, 1910; and I continued—everything was in my possession, practically under my directions—until I received notice from Mr. Bent, and papers, that practically amounted to the fact that I was no longer in their employ.

Q. You don't remember just what date you did turn over the property?

A. My remembrance is that it was on the 3d of August, because I went to the westward directly after that; I had several affairs to attend to; that is my remembrance.

Q. It was along about that time, the latter part of July or 1st of August, 1910? A. Yes, sir.

Q. Now, Mr. Tripp, did you make any final report

(Testimony of Herman Tripp.)

upon your doings there to the parties who employed you?     A. I made continuous reports.

Q. I will ask you as to whether or not in your examination of this property for the parties by whom you were employed if [464—314] you came to any conclusion about opening up the property on a different plan and working it on a larger scale than it had been worked theretofore?

A. That was the idea of my work, to find out the best location, most suitable place, to open the mines in a business-like way; and I examined every place along the line of the creek, had measurements made and mapped, and finally determined on the place at Shady Bend near where the tunnel is now located and run.

Q. Near where the big working tunnel of the Ebner Company's property is now run or is now being run?

A. Now run.

Q. Where, Mr. Tripp, at that time did you conclude would be the best place to erect a mill, with respect to where the grade up there now is graded off for a mill site near Shady Bend?

A. With respect to the place that I would have chosen?

Q. Yes, I want to know about where the place was with respect to where this grading has been done up there for the mill site and where there is a little 5-stamp mill?

A. My place would be nearer where the 5-stamp mill is; the place I had chosen was on that side of the tunnel, and the place I chose for a tunnel was in a



(Testimony of Herman Tripp.)

slightly different place than that—I don't know just how far, but not more than 50 or 75 feet from where this tunnel is; and my place for a mill, or what would have been my choice in a place where I would have had work done would be on the site that the 5-stamp mill is on.

Q. Did you finally make any recommendation before you quit the service of the company of this plan?

A. Well, I would have to look over my letter files, —I certainly did; I kept constant correspondence going all the time to Mr. Underwood; that is the only one I reported, but I don't remember [465—315] that I stated anything to Mr. Bent or Mackay at that time, who were here; they chose other locations after I had got out of the employ of the company.

Q. Now, what property, Mr. Tripp, did you recommend in the way of running in tunnels?

A. What further than that I have stated?

Q. Yes, did you contemplate running any tunnels in the opening up of the property?

A. I calculated to run a tunnel from that point that would have the outlet of the tunnel located in the proper place for a mill, according to my way of thinking the best place, and the tunnel would have been driven to intercept the Ebner lead in the best place for the general opening up of the mine, and it would have crosscut the claims.

Q. You expected to commence that tunnel then down about Shady Bend and crosscut the formation and run it through the property up at the old workings of the Ebner mill, did you?

(Testimony of Herman Tripp.)

A. I had it in view to commence the tunnel at the place where it is now located, or very near there, and drive it in so that it would come to the southerly end, the southeasterly end of the Ebner property.

Q. That was up about the old workings where Ebner had been running his 15-stamp mill?

A. It would have been under that part of the mine.

Q. Did you do any work in 1909 in the running of this tunnel?

A. Stripped off the surface of the ground and blasted and cut in and faced it up and got it ready to commence work on.

Q. I will ask you if during the examination of the property, Mr. Tripp, over these different periods of time that you have testified concerning as to whether or not you became fairly well acquainted with the boundary lines of some of the property of the Ebner Company?

A. During the time that I was there we found a great many posts; [466—316] we surveyed around the boundary lines of the property, and I had it pretty well in mind at that time as to just about where the boundary lines of the Ebner property were.

Q. You knew approximately at that time where the boundary lines of the Lotta Lode Claim were?

A. Yes, I did.

Q. Did you make an examination of the boundary lines of the Lotta Lode Claim with anyone else, any surveyor, or anyone with you?

A. About the spring of 1908, Mr. Ebner employed Hill and Wettrick to go up on the Lotta Claim and

(Testimony of Herman Tripp.)

survey out the boundary lines; at that time I was doing general work around in the shape of mapping and getting a lot of things in my head that would aid me in sizing up the property, and I went with them and we surveyed out the lines of the Lotta Claim; we commenced at a corner near a cabin that had been standing there for years, in the brush, an old time cabin where we found the post; Mr. Ebner went along and showed where that post was, and from that we brushed out and went around that part of the claim which would have been on the southerly side of Gold Creek.

Q. Would that be one of the side lines or one of the end lines of the Lotta that extends across the creek?

A. We brushed down to the creek from this stake that was set near where this old cabin was; that would have been an end line; then we brushed down on towards Snow Slide Gulch and surveyed around there.

Q. This cabin that you speak of is on the left-hand bank of the creek, I mean going down the creek?

A. Yes, it isn't near the creek, it is close to where an old road used to pass up into the Basin and it is on the right-hand side going up of that old road.

Q. It is on the left-hand side of the creek going down the creek?      A. Yes.      [467—317]

Q. Is that cabin visible from what is known as the Basin road, which is on the left-hand side of the creek going down the creek?

A. Yes; at different times in the year the alder

(Testimony of Herman Tripp.)

grows very high; I guess it is pretty near covered up at this time of the year.

Q. You knew at that time where the lower side line of the Lotta claim was?

A. I knew nearly all the lines.

Q. Did you do any brushing out on the lower side line of the Lotta claim?

A. Yes, we did; we brushed out all around on that side of the creek; however, we did set a post first, if I remember right, we went up the Basin road and we found a post just as we passed over a certain bridge, and we set a flag up on that post, that would have been one of the side lines of the Lotta and Parish; and then we went up to the bridge that passes over to the boarding-house or to the Ebner mill, and went down on that side of the creek until we came to this cabin where Mr. Ebner showed us that post, and from there we worked over towards the creek, and then came back and went down the creek.

Q. Was this flag that you set on a post on the same side of the creek as the cabin was on?

A. No, it was on the side of the road, the regular Basin road.

Q. Where, with respect to that post that you found over next to the cabin and the one that had a flag on it on the other side of the creek, did you do any brushing out?

A. We did it from the line next to the cabin out to the creek, we didn't cross the creek, didn't need to; as far as that is concerned, you could see right



(Testimony of Herman Tripp.)

down through the line; you could see this flag as soon as we got it brushed out, which [468—318] was over on the Basin road.

Q. The brushing out was done on a line with the post you found next to the cabin and the post that had the flag on it? A. It was.

Q. That was in 1908? A. Yes.

Q. Who was with you at that time, Mr. Tripp, when that work was done, if you remember?

A. Well, Hill was there, and Wettrick, Oscar Harri and Owen Kirk, if I remember right; Kirk was there I know, he was working for Ebner at that time and did some work in connection with the survey.

Q. Did you see any indications there, Mr. Tripp, of there having been any brushing out on this line before you people did it in 1908?

A. There were old axe marks there.

Q. Have you noticed whether or not that line as brushed out then is now visible and can be seen when you are over on the Basin road and when you look toward the creek or toward the cabin?

A. I haven't been up there to notice, but I think you could see it.

Q. You haven't been up there lately?

A. I haven't paid any particular attention; you could see it for a long time—when it was cut some of the alders were very thick, and when they were cut of course it left quite a swath brushed out, about 10 or 15 feet wide.

Q. Could that have been seen plainly in 1910, in

(Testimony of Herman Tripp.)

August?     A. Yes, it could.

Q. You worked up there in the latter part of July and August, 1910?     A. I did.

Q. I will ask you whether or not it could be plainly seen as [469—319] brushed out in August, 1910?

A. I know it could be.

Q. Now, I will ask you, Mr. Tripp, as to whether or not during the time that you were conducting this work in the year of 1910, you made out any location notices and did any posting of notices on Gold Creek?

A. I posted a notice claiming the water right on Gold Creek.

Q. I will hand you a paper here, which is marked on the back Defendant's Exhibit No. "D," received in evidence January 14, 1914, and ask you whose handwriting that paper is in?

A. That is my handwriting.

Q. Did you make any copies of that paper, Mr. Tripp?     A. I did; this was an original.

Q. How did you make any copies—that is, was it on a typewriter or did you write it?

A. I went into the place where we had been doing our mapping, and we had some big sheets of carbon paper, and I threw one of them down on a drafting board that was there and I struck this notice off with a carpenter's pencil, this location notice.

Q. You made the copy in that way?     A. I did.

Q. What did you do with the notice, Mr. Tripp—that copy?

A. I posted it at the dam where the flume of the Ebner Company took the water from Gold Creek.

(Testimony of Herman Tripp.)

Q. That is where the old flume that you testified concerning a while ago was used in connection with the 15-stamp mill?

A. That is the place; yes, sir.

Q. Do you know where the new high line flume of the Ebner Company has been constructed?

A. I do.

Q. Where, with reference to the intake of that flume, was this [470—320] notice posted?

A. Well, the intake of the new flume on what is called the high line flume was across the creek from this place—practically the same place excepting it was across the creek.

Q. Did you give the date that you posted that, Mr. Tripp?     A. It bears June 20, 1910.

Q. Was that the date you posted it?

A. It was.

Q. Who was present with you, if anyone, when a copy of this notice that you hold in your hand was posted?

A. I took John Soini the morning I did this work.  
The COURT.—John—

A. Soini.

Q. That is the man that was with you when it was posted?     A. Yes, sir.

Q. You signed this paper that you have in your hand, did you, Mr. Tripp?     A. I did.

Q. What did you post the copy of it on—a regular post or what was there that you posted it on?

A. There was a timber that was standing there that was a part of the gate or bulkhead at the dam,

(Testimony of Herman Tripp.)

and I posted the notice on that.

Q. On this dam that you just described in your foregoing answers? A. That is the place.

Judge WINN.—We now offer in evidence, may it please the Court, this water location notice which has been identified.

Mr. HELLENTHAL.—Let me ask Mr. Tripp a question.

Q. Mr. Tripp, you never recorded this notice, did you? A. No, I didn't record it.

Q. It wasn't recorded until some three or four months after it was posted, was it? [471—321].

Judge WINN.—It will show on the back of it—I will offer these certificates of the recorder showing the date it was recorded.

(Whereupon the said notice was received in evidence and marked Defendant's Exhibit "C.")

Q. I will ask you, Mr. Tripp, as a mining man what did you take into consideration in the location of the tunnel which you testified to a short time ago which you say you faced up down near Shady Bend on the Ebner property?

A. What I took into consideration in sizing up the whole proposition as a mining property when I chose that place?

Q. Yes, I want to know why it was that you chose the place that you have testified about as being the commencing point for a tunnel?

A. It was the best place that you could get an outlet to the mine, that would give sufficient depth to really warrant us in running a tunnel; and again,



(Testimony of Herman Tripp.)

it would give the greatest power for the water, and it would be in a place where the climatic conditions were more favorable for a mill; there is a great difference between the winter climate at Shady Bend and at the Ebner mine, or the place where they had their mill for several years; it is a great deal colder up there at the mill, the water freezes and so forth; that would have been one object in going down there; the next would have been the water fall and the greater depth that would have been gained in driving that tunnel.

Q. Having the water over head—

A. Yes, something like 400 feet at that point.

Q. What purpose did you have in view in putting up this water notice that you have just testified concerning?

A. I had received a cablegram from Mr. Underwood telling me to commence work immediately on the construction of the flume [472—322] carrying the water out of Gold Creek, and at that time I went up there, or a day or two afterwards, and located this water with the expectation to commence work and build a flume and convey the water down along the plans and lines that I had in view.

Q. Down to near this point where you had commenced this tunnel at Shady Bend? A. Yes, sir.

Q. How near the point had you expected to bring the water with reference to the end line of the new high line flume of the Ebner Company as it is constructed?

A. Well, my idea was to have gone down where the

(Testimony of Herman Tripp.)

line of the old Ebner flume is and I would have built a new flume on a little different grade, and would have connected up a pipe-line with the air-compressor that is now located there, which I had repaired and put in proper shape to be used, and with the air from that compressor I would have blown out a line for a pipe around Cape Horn and to this place practically where the mill site is now below Shady Bend; that is the plan that I had laid out.

Q. Did you do any repair work, or any kind of work, on the Ebner dam at that time?

A. I did.

Q. What was the nature of that work?

A. Well, the dam had been washed out by a big flood during the latter part of 1909, and I had that dam all repaired.

Q. What was your purpose in doing that, Mr. Tripp?

A. To keep it in shape to be used to run the water into the flume.

Q. To be used for the purpose you have testified concerning? A. Yes, sir. [473—323]

The COURT.—I want to get that date fixed as near as possible.

The WITNESS.—The date I repaired the dam?

The COURT.—Yes, was it before or after you posted the notice?

A. That was before.

Q. Do you remember approximately when that repair was made, or would you have to consult your books, Mr. Tripp?

(Testimony of Herman Tripp.)

A. I would have to look at the time-book.

Q. I wish you would do that, I notice by your other testimony you didn't give the exact date. Now, you remained in control of this property after this water location notice was posted until some time in the latter part of July or the 1st of August of the same year it was posted, 1910? A. Yes, I did.

Q. Did you have anybody living in the house up there—you didn't stay in the house on the property, did you, Mr. Tripp?

A. No, I lived at home; I went up there every day, though, or nearly every day.

Q. Do you know when the Cape Horn Lode claim was located—were you present at the time it was located?

A. Which one of the Cape Horns?

Q. Cape Horn No. 2?

A. The Cape Horn No. 2 was located at the time we brushed out this line around the Parish claim.

Q. And also the side line of the Lotta?

A. Yes.

Q. That was some time in 1908?

A. 1908; whenever that is dated, the date that that bears is the time that was done.

Q. The time the brushing out was done?

A. Yes, because I saw Mr. Ebner locate that myself.

Q. You saw him locate it?

A. Yes. [474—324].

Q. I will ask you if you know where the little 5-stamp mill is now on the ground that is cleared

(Testimony of Herman Tripp.)

off for a foundation for a mill at the place you have been calling Shady Bend?

A. I know where it is.

Q. What claim are those on, the mill and the foundation and this little stamp-mill?

A. That is on Cape Horn No. 2.

Q. That is the claim you have reference to seeing Mr. Ebner locate? . A. Yes, sir.

Q. Did you see this water location notice after you posted it, Mr. Tripp—the copy that was posted?

A. I saw it a great many times.

Q. Do you remember approximately how long after you posted it that it remained there, to your own knowledge?

A. I saw it there during the time the Bent party was here.

Q. That was some time during the latter part of July or the 1st of August, 1910?

A. Yes, because I went up with two or three of them to the head of the flume, and it was there then.

Q. How was it posted with reference to being in a conspicuous, place, or otherwise?

A. It was posted so that anybody could see it that walked up there across the dam, or was anywhere in the neighborhood; the post stood up about six or seven feet, and it was tacked onto the face of that post, and it was a round post, a round timber, and it was tacked so that it went around the timber and faced northwest, and I think it would be so that anybody could see it; the most conspicuous place it could be put in, I am sure about that.



(Testimony of Herman Tripp.)

Q. I will ask you whether you know if it could be seen from this well travelled Basin road that goes up the creek? [475—325]

A. No reason why it couldn't have been from certain parts of the road; of course there are places along on the flat where the brush grows up so that you couldn't see anyone out of the road, but there is an elevation in the road about in front of where this notice would be, and I am quite sure that it could have been seen from that point.

Q. I will ask you as to whether or not you remember that there was any road that led down from the regular Basin road, on the right-hand side of the creek as you go up the creek, down to the vicinity of this dam where you posted the notice?

A. There was a road—it had been a road where they had hauled lumber over, and there was a work trail out by the boarding house, over the bridge across the dam up that way to the road; that was grown up though—pretty well grown up, but there was a trail they used to go over a great many times when they wanted to get to the Ebner mill.

Q. Do you know where the Alaska-Juneau have their dam at the present time?

A. I know approximately where it is; never been down to it.

Q. Never been down to the edge of the creek there?

A. No.

Q. I will ask you, Mr. Tripp, if you had any machinery or air-compressors, or anything of that kind, on hand in 1910 which was calculated to be used in

(Testimony of Herman Tripp.)

the opening up of this property, as you had decided to do?

A. I had purchased an air-compressor, and had it stored down here in Juneau, and had drilling machinery and the necessary equipment for an air-compressor.

Judge WINN.—I believe that is all. [476—326]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Tripp, you went on this property first in the year 1903 or '04, you say?

A. I think that is what I said—no, I had been on it before that.

Q. Been on it before that? A. Yes.

Q. But you were on it in that year, approximately at that time? A. I was there in 1904, I know.

Q. At that time the Ebner mill was in place, wasn't it? A. It was.

Q. I call your attention now to the Plaintiff's Exhibit No. 1—you notice there, on Exhibit No. 1, a point marked Ebner dam?

A. I can see it from here.

Q. That is the same dam that was there when you were there then?

A. There is only one Ebner dam that I know of.

Q. That is the only Ebner dam there is now?

A. I think it is—I don't know of any other one.

Q. You also find on that same exhibit a point marked New Ebner mill and excavation for enlargement? A. There was a building there.

(Testimony of Herman Tripp.)

Q. There was a mill building there, was there not, Mr. Tripp?

A. I don't know; it didn't look much like a mill—inside of it there was an air-compressor there.

Q. I hand you here a photograph marked for identification Plaintiff's Exhibit No. 27, and ask you to look at it?

A. That is the photograph of that building.

Q. Now, Mr. Tripp, you are a mining man, aren't you?     A. Yes, sir.

Q. Is that a mill building or an air-compressor building? [477—327]

A. Well, it is pretty hard to say what it is; of course, it looks like a mill on the outside of it—it doesn't look like a mill on the inside.

Q. No stamps in it?

A. No; not much of a place for stamps either. However, I believe it was Mr. Ebner's intention to put some stamps in that mill; at least I heard so several times. It has been called the new mill by several people—there is no question but what that is the same building.

Mr. HELLENTHAL.—I offer that photograph in evidence in connection with the cross-examination of this witness.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit No. 27.)

Q. Now, Mr. Tripp, you were on the ground again in about the year 1908, did I understand you to say?

A. Yes.

Q. That was the time when you brushed out—the

(Testimony of Herman Tripp.)

spring of 1908, wasn't it, when you surveyed the Lotta claim?

A. I won't say it was—it was whenever that notice was recorded, I know that.

Q. Brushed out the lines, didn't you?

A. Yes, sir.

Q. Now, how much of the line did you brush out, did you say?

A. We brushed out a great big wide line that run from this post or corner that was near that cabin and over towards Gold Creek.

Q. How wide a line did you brush out?

A. Ten or twelve feet wide.

Q. Why did you brush out a line that wide?

A. Just knocked out the brush that would hang over everywhere; we brushed away all the big, tall brush; we just knocked out a great big swath so as to get all of the overhanging brush out of the way.  
[478—328]

Q. You weren't brushing out a wagon road, were you?

A. No; we were not brushing out a road, but to see over there.

Q. That was in 1908.      A. Yes.

Q. In 1910 did you see that road there?

A. Could see it any time; any particular time you looked.

Q. Did you see it?

A. Saw it every time I went up there.

Q. You took time to stop and look for it every time you went up there?



(Testimony of Herman Tripp.)

A. I generally looked on that side of the hill every time I went up.

Q. To make sure the road was still there?

A. I would distinctly look every time I went up.

Q. You now remember seeing it there every time you went up there?

A. I wouldn't swear I went up for the purpose of taking a look at the road, but I know in a general way that I could see it.

Q. You don't know that you did see it?

A. I know that I did see it.

Q. On what particular occasion did you see it?

A. I couldn't give you any particular occasion, but I know that it was there.

Q. How do you know now that you saw that particular line in 1910?

A. We had a great big hole up there with a flag on it, and I am pretty sure that that was there in 1910—I wouldn't swear to it, but I am pretty sure that it was, and the brush that we cut down was so high and so heavy that it wouldn't grow up entirely in the length of time that had elapsed since it was cut. [479—329]

Q. Now, your idea was that you should have been able to see it in 1910, but my question is, did you see it in 1910?     A. Yes, I saw it.

Q. Now, when and where?

A. Saw it where it was.

Q. When?     A. In 1910 and in 1909.

Q. What month?

A. I couldn't give you the month.

(Testimony of Herman Tripp.)

Q. How do you know you saw it?      A. I know.

Q. By what do you know?

A. My general remembrance.

Q. Did you see the flag in 1910?

A. I saw it there when I was there last, I think it was there; I know the road was there.

Q. You don't know whether the flag was there in 1910 or not?      A. No; I wouldn't swear to that.

Q. Now, how do you know the road was there—that you saw the road and didn't see the flag?

A. I know, that is all; I cannot tell you why I know lots of things that I know; I couldn't explain just exactly why, but I know.

Q. Who was present when you saw that road?

A. During the time that—

Q. In 1910?

A. In 1910, during the time that Mr. Bent's party was up here, I went along with them and I showed them the various lines; and I went up at a corner that is on the other side of the hill—joins with the Alaska-Juneau ground—and put up a great big flag there, hung it—a big cloth—in the dirt, so it could be seen so anybody could see that from down on the wagon road near the corner of the Ebner ground; I [480—330] also located a claim in there, a little fraction, I showed them where that was, and I showed them from the road the various things in a general way.

Q. Was that the corner of the Lotta that you put that flag on?

A. No, it was up to the other end of the claim—

(Testimony of Herman Tripp.)

the southeasterly end of the claim.

Q. That had nothing to do with the Lotta brushed out line? A. No.

Q. And you don't now remember any particular time in 1910 when you saw that brushed out line?

(Not answered because of objection.)

Q. Now, Mr. Tripp, you testified about doing assessment work on the Parish No. 1 by brushing out trails, didn't you?

(Not answered because of objection.)

Q. Mr. Tripp, isn't it a matter of fact that when you brush out a line in that vicinity you cannot see it a year after it is brushed out? A. No, it is not.

Q. Didn't you testify yourself to that?

A. It makes a whole lot of difference how you brush out a trail; if you simply brush out a little bit of a trail, or if you cut out a great big broad trail. You can see the old survey lines there through the alders any place, if they have been brushed out properly.

Q. The lines that you brushed out on the Parish, then, were the character of lines that grow up in one year? A. That was a survey line; yes, sir.

Q. That is how you reconcile your testimony, is it?

A. I don't reconcile—I know.

Q. You knew that the lines that were brushed out on the Parish claim grew up in one year, didn't you?

A. That particular line that I spoke of that was brushed out from the post over to the creek was brushed out in a great big way. [481—331]

Q. Now, the other lines would grow up in one year,

(Testimony of Herman Tripp.)

and that would not—is that right?

A. Some would and some would not.

Q. You did testify that brush would grow up there very fast, did you not?

A. I testify now that the brush grows there very rank and very fast—certainly does.

Q. Now, when you say a trail can be seen after it is brushed out, isn't it a fact that it can be seen in the winter and not in the summer?

A. Just depends on what kind of a trail it is—what kind of a road it is, and how it was brushed out.

Q. Brush doesn't grow in some trails as fast as in others? Is that what you mean?

A. I don't; I mean when great big heavy alders are brushed out and thrown out of the way, they don't grow up as quick as they do when you just brush out a little bit of brush.

Q. When you testified before that the brush grew up so thick in one year that you couldn't see the brushed out lines—

(Not answered on account of objection.)

Q. Didn't you testify before that brush grew up in one year so thick that you couldn't tell where it had been cut?

A. I will testify to that now.

Q. That is the general condition in that locality, isn't it?

A. That is the general condition if you just make a little trail to go through.

Q. Just grows up in one year so you cannot tell where it has been cut, isn't that true?



(Testimony of Herman Tripp.)

A. If you just cut a little.

Q. In the months of July and August, the vegetation is most luxuriant in this country, isn't it?

A. The latter part of the season, just before the frost comes. [482—332]

Q. During the month of August it is at its highest growth, is it not?

A. Yes; of course, it is.

Q. If there is any time of the year you cannot see that trail, it would be in the month of August, wouldn't it?     A. Yes, sir.

Q. At the time the trail was cut, the time it would show best would be in the winter months, of course; is that right?

A. You could see the old steps and the old axe marks, and every thing else, in the winter months.

Q. The time it would show least would be in the middle of the summer, wouldn't it?

A. May cover up everything else.

Q. Now, you went to work, Mr. Tripp, in the year 1909, was it, on this property?

A. I was employed by the California-Nevada Copper Company, or Mr. Underwood,—

Q. Now, when?     A. In 1908.

Q. 1908?     A. Yes.

Q. All right.

A. And I took charge of the Ebner property, and had the direction of affairs, and had the keys to the boarding-house, and so forth, in 1909; up to that time I had been looking over the property in a general way.

(Testimony of Herman Tripp.)

Q. But you were not right on the property?

A. I was on the property whenever I wanted to go there; I was also on top of Mt. Juneau; also on the Dora claim, and scouting around the country in general.

Q. All the time, however, from the time you went to work until [483—333] the 3d day of August, you were employed by the California-Nevada Copper Company, weren't you? A. Yes.

Q. That is right, isn't it?

A. I was employed by Mr. F. L. Underwood; I don't know anything more about the California-Nevada Copper Company than he was supposed to be the president—I don't even know that.

Q. You don't know who you were working for?

A. I know I was working for F. L. Underwood, and he was supposed to be the president of the California-Nevada Copper Company.

Q. That is all you ever knew about who you were working for?

A. That is the man I had a contract with.

Q. You were not working for the Ebner Gold Mining Company, were you?

A. I was working for Mr. Underwood, who, from communications and so far as ever I knew, had an option on the Ebner property, or some kind of an arrangement by which he had that property.

Q. Now, Mr. Tripp, that is not what I asked you at all. You were not working for the Ebner Gold Mining Company at any time prior to August 3, 1910—is that true or is it not true—yes or no?

(Testimony of Herman Tripp.)

A. I don't believe I can answer that question.

Q. You could answer it when you testified here a month or two ago, couldn't you?

A. I didn't testify a month or two ago.

Q. When this matter was up for hearing—

A. I have been told, and was told by Mr. Underwood, that he had the Ebner mine and that he wanted to get adjoining properties to that, and I was out here looking around for that purpose, and never had any special occasion to ask anything [484—334] of the Ebner mine, or ask them for possession, until I wanted to get to sampling; then I asked Mr. Ebner for the keys to the boarding-house and the property, and told him I was then ready to commence operations, and I put an assay office up there, started a boarding-house, and so forth, and the watchman who was the keeper for Mr. Ebner then went to work for me.

Q. Can you not answer my question?

(Preceding question read to witness.)

A. I cannot answer that question unless I know whether Underwood at that time was owner of the Ebner mine; I don't know anything about it; I don't know now who owns the Ebner mine.

Q. Let me ask you this question, Mr. Tripp,—you were a witness when this matter was up on preliminary hearing, weren't you?     A. I was.

Q. Last spring?     A. Yes, sir.

Q. And as such witness, didn't you testify in answer to questions, while you were under oath as follows: "Q. You were not working for the Ebner

(Testimony of Herman Tripp.)

Gold Mines Company? A. I had charge of the Ebner Gold property. Q. But you were not working for that company? A. No, I don't think I was—I didn't look to them to pay me a salary. Q. You testified up here at one time that you were not working for the Ebner Company? A. Yes, I believe I did. Q. That is true, isn't it? A. I don't know who I was working for more than I know who paid me, because they may have been the Ebner Mining Company, I don't know. Q. You don't know? A. No, sir. Q. However, you understood that you were working for the California-Nevada [485—335] Copper Company? A. Yes, sir. Q. You supposed that they practically owned it, or would own it, or that Underwood owned the Copper Company? A. Yes, sir." Now Mr. Tripp, did you testify to all that stuff I read to you?

A. I believe I did.

Q. Now, did you testify at the time the case of the Ebner Gold Mining Company against the Alaska-Juneau Company was on trial here in 1911—you were a witness in that case, weren't you?

A. I guess so.

Q. Did you testify at that time that during this period of time you were not working for the Ebner Gold Mining Company?

A. I don't know whether I did or not.

Q. Don't remember? A. No.

Q. If you did so testify, was it proper or not?

A. I was not working for them if you call Mr. Ebner the president of that company, and Mr. B. M.



(Testimony of Herman Tripp.)

Behrends the secretary; I was not taking any orders from them, if you would call that working for the Ebner Company and I would have to go to them for directions, because I wasn't.

Q. You had nothing to do with them, did you, Mr. Tripp?     A. No.

Q. They did not hire you and they did not pay you, did they?     A. No.

Q. There was no contract or agreement of employment of any character between you and the Ebner Gold Mining Company?

A. Unless it was with Mr. Underwood and his connection with the Ebner Gold Mining Company.

Q. Mr. Underwood was connected with the California Nevada Copper [486—336] Company and with the Alaska-Ebner Gold Mines Company, wasn't he?

A. The Alaska-Ebner Gold Mines Company was a holding company which practically owned the whole of the Ebner stock.

Q. You don't know anything about that, do you?

A. No.

Q. All you know you were hired by Mr. Underwood, who was the principal bond holder?

A. Yes, sir.

Q. And you now say you never had any dealings with the Ebner Gold Mining Company—either with Ebner or Behrends or anybody connected with it?

A. I had a conversation with Mr. Ebner—

Q. Did Mr. Ebner hire you?     A. No.

Q. You were working for him, weren't you?

(Testimony of Herman Tripp.)

A. I was not taking orders from him, not to any extent.

Q. I want you to answer my question—

A. I will try to answer your question—I am trying to tell you as well as I know how.

Q. I want you to tell me who you were working for at that time?     A. F. L. Underwood.

Q. F. L. Underwood personally.

A. I don't think I was personally, but as a company. I met the directors of the company while I was in New York, and the secretary of the company, but I was hired by Mr. F. L. Underwood, and the contract was made out on the California-Nevada stationery.

Q. Mr. Underwood was connected with the California-Nevada Copper Company, wasn't he?

A. Yes. [487—337]

Q. That is the Copper Company to which you referred, is it?

A. The California-Nevada Copper Company, I am referring to that.

Q. Not referring to the Ebner Gold Mining Company are you?     A. No, I don't think I am.

Q. Was it the California-Nevada Copper Company you were working for, or for Mr. Underwood?

A. I was working on the Ebner mine for the California-Nevada Copper Company, that is as near as I can get at it.

Q. How long did you work there?

A. Directly on that property?

Q. Yes; when did you quit—that is what I want to

(Testimony of Herman Tripp.)

find out?     A. On the 3d day of August, 1910.

Q. You remember that definitely?

A. You bet I do, yes.

Q. You are sure it was the 3d day of August, 1910?

A. I remember that day because I had a paper served on me from Winn & Burton's office to get off the ground and deliver the keys and possession and so forth.

Q. To Mr. Bent?     A. Mr. Geo. E. Bent.

Q. That is the day you turned over to Mr. Bent possession of the property?     A. Yes.

Q. And you knew that up to that time you were working for the California-Nevada Copper Company and no one else, didn't you?     A. I didn't.

Q. Do you remember suing the California-Nevada Copper Company for your pay?     A. Yes.

Q. You didn't sue anybody else, did you? [488—338]     A. I don't think I did.

Q. If you had worked for somebody else you would have sued somebody else, wouldn't you?

A. I sued from the place I thought the money should come from.

Q. You didn't sue anybody but the California-Nevada Copper Company for your pay, did you?

A. No.

Q. And you got your pay from the California-Nevada Copper Company as a result of that suit, didn't you?

A. I do know I didn't get it from them—I got it from somebody connected with the company.

Q. You knew then that you were connected with

(Testimony of Herman Tripp.)

the California-Nevada Copper Company, didn't you?

A. I think I knew that at the time.

Q. Working for them up to the 3d day of August, 1910? A. Yes.

Q. And had been working for them for the matter of a year or so, or more? A. Yes.

Q. Now, that Cape Horn claim was located by Mr. Ebner himself personally, was it not, Mr. Tripp?

A. Yes—No. 2.

Q. Cape Horn No. 2—is his own name?

A. It had been located as a mill site for one of the claims before.

Q. It was located for a mill site for another Cape Horn claim, was it not?

A. No, I think it was called the Lotta, or some other claim.

Q. I will refresh your memory from the record—don't you know, Mr. Tripp, that that mill site there was a mill site located by Arthur Lovett, Anna L. Zimmerly and Ebner jointly for the use of another mining claim they had in that vicinity, [489—339] and had nothing to do with the Ebner property at all.

A. I don't know.

Q. You don't know anything about that, is that right?

A. I know there was a mill site down there located, and I know that when I notified Mr. Underwood of the fact that Mr. Ebner had located a claim—

Q. Now, wait a minute, Mr. Tripp; I am not asking you when you notified Mr. Underwood; answer my questions. You don't know anything about that



(Testimony of Herman Tripp.)

mill site, as to who owned it, who located it, or what mill site it was, do you—is that right?

A. Strictly speaking, of course, that is right. I know there was a mill-site located down there which was considered part of the Ebner mine.

Q. Who considered it such? A. I did.

Q. Why?

A. Because there was a location there that was talked over as being a mill site that belonged to the Ebner mine.

Q. We will discontinue that question until I get the location notice. You don't know that that mill site belonged to Arthur L. Lovett and William M. Ebner?

A. No, I don't know that.

Q. You have looked at the location notice, haven't you?

A. I don't think I ever looked up the records at all.

Q. You are just volunteering this testimony to get in something, is that right?

(Not answered because of objection.)

Q. Do you know the difference between what you know and what you think?

(Not answered because of objection.)

Q. Now, Mr. Tripp, to return to the Cape Horn lode, you know that was located by Mr. Ebner in his own name—Cape Horn No. 2? [490—340]

A. Yes, I know that.

Q. You know that to be true, don't you?

A. Yes.

Q. It was located by the Ebner Gold Mining Company, was it?

(Testimony of Herman Tripp.)

A. No, it was located by Mr. Ebner himself.

Q. And you know furthermore that the Cape Horn No. 2 remained the property of Mr. Ebner himself until about a year ago, when it was transferred to the California-Nevada Copper Company, don't you?

(Not answered because of objection.)

Q. I call your attention, Mr. Tripp, now to the location notice of the mill site in the records of the Juneau recording district, at page 147 of Book No. 5 of Placers, and ask you to look at it and tell me if that is the same mill site of which you have been speaking—if that is located in the same spot and the same ground covered by the Cape Horn No. 2?

(Not answered because of objection.)

Q. Now, Mr. Tripp, you went to work for the California-Nevada Copper Company on this Ebner property with a view of sampling the property, is that right? A. Not entirely.

Q. That was the first object you had in mind wasn't it?

A. That was the first thing I had in mind to do.

Q. Go and sample the property and find out whether the property was or was not good property to buy, wasn't that the idea?

A. No; because they had already had some understanding about buying it.

Q. They hadn't paid for it yet, had they? Merely an option on some of the stock isn't that right?

A. I don't know anything about what they had.

Q. You went on to find out what the property was worth—to sample it? [491—341]

(Testimony of Herman Tripp.)

A. I went on to find out about enlarging the property, see what the extent was, and to get at the most feasible way of working it.

Q. You didn't go on to find out if the property was a desirable property to buy, did you?

A. No, that wasn't my mission there.

Q. That wasn't any part of your business up there?

A. No; it was not.

Q. You didn't go on there to sample—you sampled all the different claims, didn't you?

A. Not all over them—I sampled all of the claims, but I didn't sample over the old workings at that time. I had done it before that, however.

Q. You sampled most all over the ground, didn't you?     A. Pretty much over it.

Q. Took assay samples at different points?

A. Yes, sir.

Q. You had this fellow Wallenberg make a map and you put on the assay values of the samples you took on that map, didn't you?     A. Yes, sir.

Q. You prepared a large map showing the values of the different ore croppings at different points?

A. That was what he was working on.

Q. Whenever you saw a cropping sticking up anywhere you took a sample and assayed it and placed upon this map the result of your investigation?

A. Yes.

Q. And you did that for the purpose of finding out what was on the property, didn't you?

A. Certainly did.

Q. And having found that out, Mr. Tripp, you also

(Testimony of Herman Tripp.)

figured on the best plan of opening it up? [492—342] A. Naturally did.

Q. One of the things that you figured on was putting in a larger mill, wasn't it? A. Yes.

Q. You knew that that mill was not large enough to operate the property?

A. I did; and it was not in the right place.

Q. Up to that time there had been a small mill of 15 stamps? A. Yes.

Q. And the water of Gold Creek had been used to operate this mill? A. It had.

Q. There had been a new building put down below the old mill for a new mill?

A. That was Mr. Ebner's work, and there was a mill built down there—a building, if you want to call it that—it has *has* been called by various people the new mill.

Q. New mill of the Ebner property, that was true, wasn't it?

A. The building was larger—there was never anything there in the shape of a mill.

Q. There were no stamps in it?

A. Nothing but a compressor in there.

Q. There had been a room put out in the mill and the compressor was put in that room, is that right?

A. There was a room.

Q. Partitioned off? A. Partitioned off.

Q. In the building? A. In the building?

Q. A small room in one corner of the mill and the compressor was put in that room, and that building that was generally referred to as the new mill was on



(Testimony of Herman Tripp.)

the ground when you went on there in 1909? [493—

343] A. Yes; and a long time before.

Q. There was also an excavation there made for the purpose of enlarging this building, wasn't there?

A. No.

Q. There wasn't?

A. Not that I remember about.

Q. Have you ever looked around there very close?

A. Looked all around it.

Q. And you never saw any excavation there?

A. I never saw any excavation there.

Q. Was there any excavation at one end of that building?

A. There was a dry well put in there inside of the building; it didn't look to me as if it would stand for any kind of a stamp battery, machinery or anything else that I knew anything about.

Q. I am talking about the outside of the building.

A. No, sir; I don't think there was any excavation outside of that building—don't think there is to-day.

Q. Well, you look at it sometime. You never looked at it for the purpose of seeing it, did you?

A. Got a pretty good idea in my mind about it.

Q. That was there when you came, that mill?

A. Yes.

Q. You considered that was one of the places where a mill could be built? A. Could be built, yes.

Q. That is one of the points you wrote to your company about, wasn't it?

A. I wrote to my company about every point—I wrote about certain places—that was one of the

(Testimony of Herman Tripp.)

places. Then I went down the creek—we ran a contour line all around—and I came to the conclusion there was only one feasible, practical place to start in, which would be where the tunnel is run. [494—344]

Q. You now testify that you came to that conclusion that that was the feasible and practical place?

A. Yes, sir.

Q. What were you going to do with your tailings, Mr. Tripp?

A. Tailings run down the hill—always have.

Q. Who owns the ground below there?

A. I don't know.

Q. Never cared, did you? A. No.

Q. That was a feasible and practical place to put the mill, because the tailings would run onto somebody's ground—you didn't know where they would go?

A. The tailings would run down the creek; they always have run down the creek.

Q. You are a mining man, aren't you, Mr. Tripp?

A. I have been in the business.

Q. You don't pretend to be a mining engineer, do you?

A. Some people call me that. I have been hired in capacities where they call me a mining engineer—I haven't any diplomas from any colleges.

Q. Another thing—you think it would be feasible and practical to build the mill where this excavation has been made, under this slide, where this excavation of Mr. Mackay's has been made?

(Testimony of Herman Tripp.)

A. That wasn't the place I chose.

Q. You never intended to build the mill there?

A. I testified here a short time ago that my idea of placing the mill was further around on the bend.

Q. Further around on the bend?

A. Yes, on a point on Cape Horn near part of the ground on which the 5-stamp mill is.

Q. There is a little 5-stamp mill there now is there?

[495—345] A. Yes.

Q. And your idea was not to build it where this excavation was made? A. No.

Q. That didn't look like a good spot for the building of a mill?

A. That wasn't the place I chose.

Q. The place you chose would be hit by the slides a little further up? A. I don't say that.

Q. Now, there was another place that you had picked out, Mr. Tripp, wasn't there, besides where what is called the new mill building on the Lotta is situated, on the point between this Mackay excavation—the point you picked out, Mr. Tripp, was between the Mackay excavation and the mill on the Lotta up the creek in the canyon, is that right?

(Testimony of Herman Tripp.)

A. No, it would be just below the end of the Jualpa dam, and from that around the tunnel.

Q. Further up the canyon?

A. Further up the canyon.

Q. That would be between the new building on the Lotta and the excavation that Mackay made?

(Testimony of Herman Tripp.)

A. No; west from what is called the new mill on the Lotta.

Q. Between the two?

A. Between, would be the middle?

Q. Not in the middle, but between the two.

A. Yes; if you want to put it that way.

Q. There was another place where you also selected where a mill could probably be built, where the Alaska-Juneau built its bunk-house?

A. Could have been built there.

Q. That was also another point which you had selected?

A. I had my measurements from that, like I did all the rest [496—346] of them, and mapped them in.

Q. You reported to your company there were these three mill sites that were available for building a large mill on?

A. I reported to my company the various conditions, and levels from the various mill sites, length of tunnels, and so forth.

Q. And that these three places were available for that purpose, is that right?

A. I guess it is right—available would mean that they could be used.

Q. Could be used?      A. Yes.

Q. That is as far as you went in your reports to your company, Mr. Tripp, is it not?

A. I don't remember just the extent.

Q. You never recommended one mill site over the other?



(Testimony of Herman Tripp.)

A. Yes, I did, if that is what you mean.

Q. Have you got your correspondence, Mr. Tripp?

A. I don't remember whether I have or not.

Q. Will you be so kind as to pick up your correspondence and bring it here this afternoon, between you and Mr. Underwood and the company?

A. As far as I am concerned, I would just as leave you had it as not. I don't know whether I have it or not—that correspondence was pretty well mixed up during that case I had against the California-Nevada Copper Company.

Q. On the 3d of August when you left the employ of the company, the company hadn't yet decided as to where to build the new mill, had they?

A. I think they had; I don't know about it.

Q. You don't know about that? A. No.

Q. You certified on that once before, didn't you?

A. I don't know whether I did or not.

Q. Now, yet me ask you this question: Didn't you testify on the preliminary hearing here for an injunction, a few months [497—347] ago, while you were a witness, as follows: "Q. Had the Ebner already put up a building there preparatory to the construction of a new mill?" That was what I asked you; your answer was this: "A. Yes, sir. Q. And had made this excavation on which to place their building? A. Yes, sir." Did you testify that way or did you not?

A. Did you ask me the question if I testified?

Q. Did you so testify? A. I probably did.

(Testimony of Herman Tripp.)

Q. It is true that there was an excavation there at that time?

A. Excavation where the mill was built? Maybe that was a mill—I call it a building. There was a place excavated and a big shed put over it—walls put on the side out of dry rock, closed in—I believe there was a little place there had some cement in it.

Q. You don't know of any decision having been reached by the company as to where the new mill was to be built at the time you left their employ, on the 3d of August, 1910, did you or did you not?

A. State that question again.

Q. You didn't know at this time of any decision having been reached by the company that you were working for, or anyone else in that connection as to the point where the new mill was to be built, when you left the employ of the company on August 3d, 1910?

A. No, I don't think I did; that was about the time Bent got in and went to managing affairs, and I don't think I knew just what they were going to do.

Q. There had been no definite decision reached as to where the new mill was to be built at that time?

A. The location of that mill, if I remember right, was left to me.

Q. Now, answer that question—you can answer that question, [498—348] yes or no—now, answer it.

A. I don't know of any positive decision as to just where that would be located, and definitely decided on by the company—that is, through any instruc-

(Testimony of Herman Tripp.)

tions that might have come. I don't know what Bent's ideas were, or whether he had any, or had any instructions from the company, or not.

Q. All you know is, Mr. Tripp, that there were at least three places under consideration; one the Lotta; one where the Alaska-Juneau bunk-house is built and one near where Mr. Mackay started his excavation up the creek a little ways?

A. I know they had all been reported on.

Q. That is all you know? A. Bent might—

Q. You don't know what they might have done?

A. He might have had all that up.

Q. You don't know what the idea of the company was on that subject at all?

A. I don't know what it was after Bent came up; there was a kind of a mix-up in affairs.

Q. That was about in June when that occurred?

A. Yes.

Q. From that on you don't know what the company's idea was on any subject—got things mixed up between you and Bent?

A. I don't know anything about it after that.

Q. When did Bent come, the 1st of June, wasn't it? A. Latter part of July.

Q. The latter part of July he came here?

A. Came where?

Q. To Juneau.

A. I don't think Bent came here until July 10th.

Q. It was a month or two before that he first got mixed up with the company, wasn't it? [499—349]

A. I don't know about that—there are a lot of

(Testimony of Herman Tripp.)

things I don't know.

Q. Might have been three months?      A. Yes.

Q. That is all you know about it, Mr. Tripp?

A. I don't know whether it is or not; I know a good deal about the property and this gentleman, Mr. Hellenthal.

(Whereupon an adjournment was taken until 1:30 P. M.)

### AFTERNOON SESSION.

H. T. TRIPP, on the witness-stand.

Cross-examination (Cont'd.).

(By Mr. HELLENTHAL.)

Q. Mr. Tripp, have you got that correspondence?

A. I have some correspondence; I don't know what you want hardly.

Q. This is the correspondence? (Taking papers from witness.) The letters, as far as you know, relate to that subject?

A. No; I just got through a small part of the letters; Mr. Underwood always wrote kind of telegraphic replies; he didn't have much to say; he was a very peculiar man, and anything relating to the purchase of Jualpa basin, locations, and so forth, he would simply cite something in answer to some correspondence I might have sent him on the matter.

Q. As far as you have been able to find, these are the letters?

A. As far as I could see that the Cape Horn was mentioned in those letters.

Q. Now, Mr. Tripp, this includes also the letters referring to the Lotta mill site and the mill site



(Testimony of Herman Tripp.)

where the Alaska-Juneau [500—350] bunk-house is, is that right?

A. I don't think that they do.

Q. You have letters on that subject also?

A. Well, if you will come up some evening, we can take it in from 9 o'clock until half-past one or two, and we can go through that correspondence; I didn't have time to-day to hunt it all out.

Q. Now, Mr. Tripp, you got a telegram from Mr. Underwood in June, 1910? A. Yes, sir.

Q. That telegram is in the records here, isn't it, Mr. Tripp—it was offered in evidence in this case—now between the time that you went on the property in 1904 and the summer of 1910, the Ebner property had not been operated, had it, Mr. Tripp?

A. It was operated at a time when Mr. Ebner was called up to Skagway on a grand jury; now, I cannot fix that date; he asked me to go up and take charge of some work for him for a couple of weeks; I don't know the date; it was around five or six years ago; I cannot tell.

Q. That is the best of your recollection—

A. There was a long time it was not operated, I know that.

Q. It is the best of your recollection there was not any operations on the property—no active operations, I mean,—no milling operations, between the time you were there in 1904 and the summer of 1910?

A. The time I mean was from about 1904, what he did after that, but from the time I went on in 1908, and up to the time that I quit the employ of the Cali-

(Testimony of Herman Tripp.)

fornia-Nevada Copper Company, or the Ebner Company, the work on that mine—there wasn't anything done in the shape of milling ore or active work, except to run the dynamo for lights, and testing out the [501—351] compressor after they got it fixed.

Q. There were no mining operations? A. No.

Q. Now, this is the telegram, Mr. Tripp, isn't it; I hand you here a copy of the telegram; that is a copy of the telegram you got from Mr. Underwood, isn't it? A. Yes, that is the one.

Q. Just read that, Mr. Tripp.

A. "You can arrange for putting dam and flume in order immediately. Money required will be supplied Tuesday."

Q. "You can arrange for putting dam" and is it "and flume" or just "flume"—"dam and flume in order immediately. Money required will be supplied Tuesday." That is the telegram you refer to, is it, Mr. Tripp? A. Yes.

The COURT.—What is the date of that telegram?

Q. The date of the telegram is June 17, 1910, isn't it, Mr. Tripp? A. June 17, 1910, it says on there.

Q. Now, the dam and flume referred to in that telegram were the old Ebner dam and the old Ebner flume, were they not, Mr. Tripp? A. Yes.

Q. You had already put the dam in order before you got that telegram; is that right?

A. I had worked on the dam.

Q. That dam needs repairing from time to time, doesn't it? A. Yes.

Q. Had you been keeping it in repair?

(Testimony of Herman Tripp.)

A. A great big hole went out of the center of it; that was put back.

Q. Was put back by Mr. Thane shortly before you came there, wasn't it? [502—352]

A. I remember he had some trouble with the dam, but I relate to another time.

Q. Another time since Mr. Thane fixed it up and put repairs in in the middle of it? A. Yes.

Q. That was quite a while before?

A. I forgot to bring that book.

Q. Now, you know it was quite a while before that?

A. Yes; in the season of 1909 or in the commencement of 1910, I cannot remember which.

Q. Along about that time, late in 1909 or early in the season of 1910 you had repaired the dam because it had washed out? A. Yes.

Q. And that dam was the dam that supplied the old Ebner flume that had been used for many years; is that right? A. It was.

Q. And the same Ebner dam that had been there—used there, for many years? A. Yes, sir.

Q. Now, on the 20th of June you posted this water notice, Mr. Tripp; is that right? A. Yes, sir.

Q. And you posted that right at the intake of the old Ebner flume, didn't you? A. I did.

Q. On the right-hand side of the creek, going up the stream? A. Yes, sir.

Q. Right where the water is turned from the old Ebner dam into the old flume?

A. That is the place.

(Testimony of Herman Tripp.)

Q. There was a stake there that formed a part of the intake; [503—353] is that right?

A. Yes, sir.

Q. And it was on that stake that you posted the notice? A. It was.

Q. And the notice you posted there was a carbon copy of the notice that has been offered in evidence?

A. It was.

Q. Now, I think, Mr. Tripp, probably there was some misunderstanding of the testimony in the question of that dam—there was no road or trail at any time, across that dam, was there?

A. There was a trail up over the ditch; there was a walking plank across the dam, unless it had been destroyed by a flood.

Q. You wouldn't swear there was a walking plank across the dam, would you?

A. I wouldn't say all the time, but I have been up many times that way and there was a plank across there—a man could walk back and forth over there.

Q. You wouldn't testify there was such a plank there in the year 1910, would you?

A. I don't remember about that, but I think that you could get across there at any time, to go back and forth.

Q. In the months of July and August the water is pretty high in Gold Creek, isn't it?

A. I don't remember about it that year.

Q. In this year, isn't it? A. Yes, sir.

Q. At that time there was no way to get across the Ebner dam, from one side of the creek to the other?



(Testimony of Herman Tripp.)

A. There would be if that gate was in such shape, as to make a passageway for the water. I don't remember just exactly how it was then, because it had been pretty well torn up [504—354] by that flood—the opening for the flood water to get out of might have been wider at that time.

Q. At that time you don't think there was any passageway—

A. I don't say I don't think so, because I don't remember.

Q. There had been quite a flood just before that, hadn't there?

A. There had been at the time it took the dam out.

Q. You don't know whether there ever was a passageway built across there since or not; is that right?

A. No; I would not swear to that.

Q. Now, that dam and place where you posted the notice was on the Crown Point lode claim, wasn't it?

A. There are two claims come together there; I don't really know whether it is or not to tell the truth; part of it is on one of the placer claims, or very close to it.

Q. Isn't the stake of the Crown Point very close there, Mr. Tripp, on the corner?

A. There was a post across the dam.

Q. A little below—

A. Yes, a little bit below it.

Q. Anyhow, that would put the dam and the intake of the flume on the Crown Point lode claim, wouldn't it?

A. I wouldn't want to say positively.

(Testimony of Herman Tripp.)

Q. That is the best of your judgment, however, isn't it?

A. I have forgotten the names of those claims; I know pretty nearly how they lay, but I don't remember the names.

Q. Wouldn't be sure about that?

A. Wouldn't be so sure.

Q. You have testified there was sort of a road leading from the Ebner mill to the Basin road—that is a branch road used for getting to and from the Ebner mill, wasn't it?

A. There was an old road that was used to get material back and forth; it was just brushed out, and that place had [505—355] been chosen as a trail for getting back and forth.

Q. For people working for the Ebner Company?

A. People going back and forth that way.

Q. Where could they go to?

A. From the Perseverance mine to the Ebner mine.

Q. Was there a trail leading from there to the Perseverance?

A. There was a good trail leading over the Ebner ditch.

Q. The Ebner flume and ditch didn't lead to the Perseverance mine, did it?

A. It certainly led from the Ebner boarding-house and mill up to the upper basin.

Q. Anyone that wanted to could go from the Ebner boarding-house to the Perseverance?

(Testimony of Herman Tripp.)

A. From the Ebner boarding-house to the Perseverance.

Q. But it wasn't the trail that people took going to the Perseverance from Juneau?

A. No; they didn't have occasion to go across the creek.

Q. The public road is some distance over the creek from the Ebner dam, isn't it? A. Yes, sir.

Q. There was no public road near the Ebner dam, was there? A. No nearer than the public road.

Q. What is called the Basin road? A. Yes.

Q. That is probably 100 feet from the dam at the nearest point? A. Somewhere near that, I guess.

Q. Now, your notice where it was posted, you have testified could be seen from that public road?

A. Yes, sir.

Q. Now, from what point on that public road could you see the notice?

A. After you passed the old cabin that was on the Humboldt [506—356] claim, you go up a little raise, and then you start down through a little depression into the flat, the basin proper, on a level with the dam; I think that raise is some 10 or 15 feet, or 20 feet perhaps, at the highest point above the level of the basin or the level of the dam.

Q. And from that place the dam is visible?

A. That part of the dam would be; if there would be any places where the brush was not too thick, you could see it from the road.

Q. But in the other places the brush is too thick except that place? A. Pretty thick.

(Testimony of Herman Tripp.)

Q. That is the only place that you could see the Ebner dam where that notice was posted on the public road?

A. That would be the best place you could get a view of it.

Q. Now, how far is that place from the Ebner dam?

A. Oh, perhaps four or five hundred feet, maybe.

Q. Might be a thousand?

A. No; it is not a thousand feet.

Q. Don't think it is a thousand feet?

A. No; it isn't a thousand feet.

Q. Probably, you think, four or five hundred feet?

A. Yes.

Q. Now, have you ever seen your notice from that point, going up and down the road?

A. I don't remember that I ever went there for the purpose of looking at the notice; I am satisfied I could have seen it from there.

Q. The notice that you posted was an exact counterpart, being a carbon copy of the one that is offered in evidence, Mr. Tripp?

A. It was. [507—357]

Q. Now, if that were posted four or five hundred feet away, and the conditions of the ground there, you don't pretend to say that anybody going up could see that Mr. Tripp had located a water right there?

A. I don't think they could read it at that distance.

Q. Nor tell what kind of a piece of paper it was?



(Testimony of Herman Tripp.)

A. Couldn't see whether it was a carbon copy or not.

Q. Or whether it was a carbon copy of anything, could they?     A. No.

Q. Or whether it was a blank piece of paper?

A. I don't think they could tell anything about it.

Q. That is the only point from the public road from which it is visible, as far as you know; that is right, isn't it?     A. Yes.

Q. Now, you never did any work looking towards the appropriation of water from Gold Creek under that notice up to the 3d of August, 1910, did you?

A. No, I didn't do any work.

Q. You never had any surveys run, or anything else, under that notice?

A. We done our surveying at that time—

Q. I mean you never had done any surveying under that notice—Mr. Wettrick or Mr. Hill didn't work for you?

A. No; they didn't work for me.

Q. Never had anything to do with it?     A. No.

Q. Up to the 3d of August, 1910, then, there had been no work done under that notice?     A. No.

Q. That was the day you left?     A. Yes.

Q. And from then on you don't know what was done?

A. No; I went away right after that     [508—358]

Q. None of these letters, Mr. Tripp, are exactly on that point we are inquiring about, are they, as far as you have been able to find out?

A. No; I just hurriedly looked through them; I

(Testimony of Herman Tripp.)

have a lot of them that there was a slight mention made—

Q. At the time you were employed by Mr. Underwood, both you and Mr. Underwood knew about the plans of the Alaska-Juneau Company about building a mill on the beach, didn't you?

A. I suppose so.

Q. The letter of October 3d, 1909—under date of September 23d, 1909, Mr. Ebner wrote to you as follows: "A tunnel from the beach to the Ebner would not be justified except that the Alaska-Juneau or other properties in the upper basin should come under the same control; believe in that case a tunnel should be run through the ground that the Alaska-Juneau has acquired for that purpose and have locations for outlet and mill sites about half mile below Juneau on the beach."

A. That is from me to Underwood.

Q. That is a letter you wrote to Mr. Underwood on that date, is that right? A. Yes, sir.

Q. Did you say whether a letter from Mr. Tripp to Underwood on that date didn't so read?

(Not answered on account of objection.)

Q. Now, Mr. Tripp, you have testified, I think, that you started some work looking towards the construction of a new tunnel in the neighborhood of where the Ebner tunnel is now? A. Yes, sir.

Q. That is on Cape Horn No. 2?

(Last question not answered.) [509—359]

Q. Mr. Tripp, that little piece of tunnel you drove over there on the Cape Horn No. 2 was to do the as-

(Testimony of Herman Tripp.)

assessment work on the Cape Horn No. 2, the Cape Horn and the Eureka, wasn't it?

A. It was in the line of assessment work at that time.

Q. The work was being done for all those three claims at that point, is that right? A. Yes, sir.

Q. That was assessment work on the Cape Horn, Cape Horn No. 2 and Eureka, three hundred dollars worth of work, in the nature of assessment work?

A. That was done under an agreement or an arrangement with Mr. Ebner.

Q. That is true, isn't it?

A. Yes; I have forgotten about the Eureka, whether that came in or not.

Q. You didn't record that notice at all, Mr. Tripp—the water notice? A. No.

Q. You look, Mr. Tripp, for the other letters when it is convenient for you.

Mr. HELLENTHAL.—No further questions.

Redirect Examination.

(By Judge WINN.)

Q. Now, Mr. Tripp, in connection with these letters that Mr. Hellenthal asked you to produce, I ask you to look at this letter I hand you now under date of October 19th, 1909, and ask you from whom you received that letter?

A. This letter bears October 19th—

Q. 1909? A. 1909. [510—360]

Q. From whom did you receive that letter?

A. I got this letter from F. L. Underwood.

Q. Got it through the regular mail, did you?

(Testimony of Herman Tripp.)

A. Yes.

Judge WINN.—I will offer this letter in evidence, if your Honor please.

(Not received on account of objection.)

Q. Now, I believe you stated to Mr. Hellenthal, Mr. Tripp, that between 1904, when you first examined this property up to 1908 that you had no personal knowledge of what was going on on the Ebner property; is that true? After you had examined it in 1904 and up to 1910, Mr. Hellenthal asked you something about whether the mines were being operated or not; did you have anything to do with the property between 1904 and 1908?

A. Not directly, no.

Q. Do you know of your own personal knowledge what was going on in the mines at that time?

A. I did at that time, but I don't remember now; there was nothing special to impress it on my mind so that I remember it now.

Q. Where was Ebner during that time, do you know—between 1904 and 1908?

A. I think he was around Juneau the biggest part of the time.

Q. What I want to find out, after you got through examining in 1904, you had no further connection with the Ebner Gold Mining Company's property after you finished that examination, did you?

A. No.

Q. Up to 1908?      A. Up to 1908.

Q. Do you remember about what time your exami-



(Testimony of Herman Tripp.)

nation in 1904 occupied, [511—361] and when you quit?

A. Yes, I know it was in March; I am pretty sure it was in March.

Q. And approximately how long were you upon the property, Mr. Tripp, making the examination?

A. Why, a couple of weeks; I had just come from California.

Q. In 1904?      A. Yes.

Q. Now, Mr. Hellenthal also asked you a number of questions concerning the repair of the dam—when you made it, I think in 1910, you were repairing the dam for the use of the water for what purpose, if any?

A. Well, we had been running the electric lights that had been used in the assay office and around the place generally, and I put the dam in order at that time to have it so we could turn the water on at any time we needed to run the dynamo or the compressor either.

Q. What were you expecting to use the compressor for?

A. I calculated to use that compressor, the first time I used it, in blasting out a right of way for a pipe-line, and whatever we would need after we built the flume to the compressor.

Q. That is, there was an expectation to use it in connection with the new flume line?

A. There was.

Q. Where were you expecting to build this new flume line to—to what point, Mr. Tripp?

(Testimony of Herman Tripp.)

A. It was my idea to run it along the line of the old flume, to pass where the end of it is now and then conduct the water by pipe down across the Gold Creek canyon and around Cape Horn to where we proposed to set up our compressors, and so forth.

Q. That was the plan that you had in mind at the time you were [512—362] doing this repair work on the dam?

A. That was the outline that had been adopted; Mr. Huntoon had been sent up here as an engineer to consult with me, and I had gone over the whole proposition with him.

Q. Who was Huntoon—do you remember by whom he was sent here?

A. Was sent here by Underwood.

Judge WINN.—That is all now, your Honor, but I wish to recall the witness for a few questions on direct examination.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. When was this Huntoon here, Mr. Tripp?

A. Huntoon was here just before the arrival of the Bent party; I think he was here up to the time they arrived.

Q. That was in the spring of 1910?

A. In July, 1910.

Q. Now, after the dam had been washed out and you put it back in—

A. Yes, sir.

Q. That washing out of the dam—you put the dam back in because it had been washed out—just kept the property in repair, didn't you?

(Testimony of Herman Tripp.)

A. That is what I did.

Mr. HELLENTHAL.—I ask permission of the Court to ask this question.

Q. Now, when you posted your notice of location for the water, it was your intention to appropriate the water and carry it to whatever mill site might afterwards be selected by the company, wasn't it?

A. That wasn't my intention.

Q. Let's see—in response to a question asked you at the preliminary [513—363] hearing for a temporary injunction, when you were a witness on cross-examination didn't you testify as follows: "Q. If your company had decided to build a mill on the other side of the creek, where the Alaska-Juneau bunk-house is, then the appropriation of water would be made for the location on this side of the creek, wouldn't it? A. I think so." Did you so testify?

A. Yes.

Q. Now, the next question: "If your company had decided that this was the place to build a mill on the Lotta claim, then the Ebner company would not have located the water as they did, but the water location would have been placed at that point. A. They would have arranged the water for this place, I suppose." Is that correct? A. I suppose it is.

"Q. But the appropriation of water was for the new mill, wherever it might be, isn't that true? A. Yes, sir." Did you so testify?

A. I think likely I did; I don't have a direct remembrance of it.

Q. That is true, the location for the appropriation

(Testimony of Herman Tripp.)

of the water was for the new mill, wherever it might be?

A. Certainly would be; but, however, that isn't the question that you asked me before—you asked me as to my judgment or my opinion, or something of that sort. My intention was to convey the water to that place at Shady Bend where I told you that I had located a place for a tunnel and for a mill site.

Q. You had located a place for the tunnel and mill site, had you? A. Yes.

Q. Isn't it a fact, Mr. Tripp, that you hadn't located that [514—364] place for either a tunnel or mill site at the time you testified here before?

A. So far as I am concerned, I had chosen the place; now, the company, of course, would have a right to choose whatever they wanted over me.

Q. The company hadn't chosen them a place, but you had made up your mind what you thought would be the best place to build a mill?

A. That is exactly the truth of it.

Q. And you thought that was a good place, and the company hadn't decided on it?

A. I don't think I have any record where there is any decision reached.

Q. And the appropriation of the water was for whatever place the company might afterwards decide to build the mill on, is that right?

A. The appropriation of the water was to be used for the benefit of the mill?

Q. And you didn't care where the mill was built?

A. Of course, I cared.



(Testimony of Herman Tripp.)

Q. But as far as the appropriation of the water is concerned—You posted the notice with a view of appropriating the water, to be used at one of three places, didn't you—on the Lotta mill site, at the point where the cabin of Harri or the Alaska-Juneau bunk-house has since been built, or at the place a short distance up the creek from where the excavation was afterwards made by Mr. Mackay? I mean on the Lotta mining claim instead of mill site, Mr. Tripp?

A. I located the water with the intention of constructing the new flume and a pipe-line down to Shady Bend, and that was my intention when I went up there that morning and located that, and I expected to have the means sent me to execute [515—365] the work, but I never did, and it didn't get that far; it only went to that particular point of locating the water, and I was waiting the rest of the time, and finally when Mr. Bent took charge I had nothing more to say or do with the matter.

Q. If they had chosen to locate the mill on the Lotta claim, then you would have come up here and testified that you had intended that the water was to be used there, wouldn't you?

(Not answered because of objection.)

Q. Now, Mr. Tripp, you are a mining man, aren't you?

A. I have been mining all of my life pretty nearly.

Q. When you posted this notice, why didn't you say in the notice that this water is to be taken to Shady Bend and there to be appropriated for use

(Testimony of Herman Tripp.)

in a mill to be erected there?

(Questions reframed because of objection.)

Q. Why didn't you put that in the notice, Mr. Tripp?

A. I don't know why; I wrote that notice in a hurry; I didn't consult a lawyer before I wrote it.

Q. You don't know why you didn't express your ideas in the notice?

A. I just put a piece of carbon paper down and scribbled that notice off in about two minutes, and went out and put it up; it was about half-past five or six o'clock in the morning when I did it.

Q. You have already testified, Mr. Tripp, when you testified in a previous hearing, in substance that if your company had decided to build a mill at the point where the Alaska-Juneau bunk-house was, that the appropriation would have been made for the purpose of using the water at that place—you have already testified to that, haven't you? [516—366]

A. I guess I have.

Q. Mr. Tripp, you never intended to build a flume where this new flume of the Ebner Company is now built, did you? A. No.

Q. Never had any such intentions?

A. I did not.

Q. That flume that they call the high line flume has the same elevation that the old flume had, hasn't it? A. About the same.

Mr. HELLENTHAL.—That is all.

(Testimony of Herman Tripp.)

Redirect Examination.

(By Judge WINN.)

Q. I will ask you, reading your notice here where it says that the water is to be taken along the bank of Gold Creek on the southerly side or to cross the creek with pipe or flume or both to any place on the property known as the Ebner property, if that water had been conducted down the way you said it was your intention to do, if it would have been conducted to Shady Bend under that notice?

A. It could.

Q. Now, state to the Court where Shady Bend is with reference—where you say that you had selected as a mill site, where is it with reference to any improvements that are on the ground up there now?

A. Shady Bend, in a general way, is down the creek from Cape Horn; if you are on the Cape Iron road and going down the road from the upper basin, it would be to the left until you come to a sharp turn in the road; I suppose properly Shady Bend is the very sharp turn in the road.

Q. What improvements, if any, are there in and about that point now? [517—367]

A. There is a tunnel run in there that touches the Ebner mine; there is a large compressor there and a little 5-stamp prospecting mill.

Q. Just explain to the Court what distance that would have been, and the manner in which you intended taking the water to that point, and the manner in which it has already been conducted there.

A. I would have conducted the water through a

(Testimony of Herman Tripp.)

flume and pipe-line from a point above what is shown on this exhibit map as "New Mill"; from that point I would have conducted it in a pipe down to near the level of the creek and then around the lower point of Cape Horn.

Q. Where would that point that you speak of now be with reference to this tunnel you say you commenced work on?

A. Very near the place where the tunnel now is run, within a few feet of it.

Q. Was that tunnel intended for assessment work, or the commencement of a working tunnel, or one or both of them?     A. Both.

Judge WINN.—I wish to recall the witness, if your Honor please.

Mr. HELLENTHAL.—I want to ask him a few questions about this notice.

The COURT.—Very well; you are examining him on the notice only.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Tripp, this notice that you posted appropriating the water flowing in the creek, and so forth, at any season of the year, to be conveyed by ditch, flume or pipe, along the bank of Gold Creek on the southerly side or to cross the creek with pipe or flume or both, to any place on the property known as the Ebner mine, or to carry across or further than the [518—368] limits of the said mine property—now, if you knew where you wanted to use the water,



(Testimony of Herman Tripp.)

why did you put all of the gunshot business to it; why didn't you state where you wanted to use it?

A. The first place I would want to use it would be the old compressor located in what you call the new mill.

Q. That is one of the places that was under consideration for the construction of the mill, is that right?

A. No, that would be the place where I had in view of having the water used, or a part of it, for compressing air to help construct or blow out the line of right of way for the pipe-line.

Q. That is the place where the new mill building stands? A. Yes.

Q. That is right, isn't it? A. Yes, sir.

Q. And you put in all this stuff here, in spite of the fact that you knew where the water was to be taken to? A. I think that is a pretty good notice.

Q. I am not asking your opinion whether it is a good notice or a bad notice—I am asking why, if you knew where you were going to take this water to, why did you mention all these various places, any where on the Ebner property or beyond the same?

A. To cover all the needs that might be required of the notice. I might want to run a fan down there, or something of that sort.

Q. And this was done because you didn't know where you wanted to use the water?

A. I knew where I wanted to use the water.

Q. Isn't it true when you wrote this notice you didn't know where the water was to be used?

(Testimony of Herman Tripp.)

A. I don't think a man knows very much of anything about a mining proposition. [519—369]

Q. Isn't that a fact?     A. That is a fact.

Q. You wrote this notice this way because you didn't know where the water was to be used?

A. No, it is not; that is not the substance of the meaning that I intended, because I had that other place in mind.

Q. But when you answered this question just a minute ago that the fact was that you wrote this notice this way because you didn't know just where the water was to be used—

A. Of course, I didn't know where the water was to be used, but I didn't write that notice with the intent of diverting it down through the old mill or to use it at that particular point near the new mill—I might want it at both of them.

Q. Or at any other particular point?

A. Yes, I had the idea in view where I wanted it.

Q. Notwithstanding the fact that you had the idea, you wrote the notice in this language because you didn't know where the company would want to use the water—that is true, isn't it, Mr. Tripp?

A. At that time the company wasn't considered very much, but I don't think it is a fact.

Q. You didn't care about the company?

A. I didn't have very much to do with any company. My peculiar relations with Mr. Underwood were not in regular company order. I was employed by him for the purpose of coming out here, and my

(Testimony of Herman Tripp.)

correspondence was with him and not with any member of the company.

Q. Let's put the question this way—

A. I would like to answer the question as correctly as I know how.

Q. Now, it is a fact, isn't it, that you wrote this notice this way, wrote it in such a way that the water could be taken to any place on the Ebner property or beyond the same, or most [520—370] any place, because at the time you wrote the notice it hadn't been settled and you didn't know where the water would be used, isn't that right?

A. No, that isn't right, because there had never been, up to the latter part of our investigations, any other place chosen for a mill or machinery, than down at Shady Bend.

Q. Is that the reason you wrote this notice this way?

A. I wrote that notice just as it came into my head; I wrote that notice in a hurry, and I covered what I thought would be a form that would answer the purpose—that is the reason I wrote it.

Q. Your testimony a moment ago was a misstatement, then?      A. I don't think it was, no, sir.

Mr. HELLENTHAL.—That's all.

Judge WINN.—Now, I desire to recall the witness.

HERMAN TRIPP, being recalled on behalf of the defendant, having been previously sworn, testified as follows:

(Testimony of Herman Tripp.)

Direct Examination.

(By Judge WINN.)

Q. I will ask you, Mr. Tripp, to examine a letter which I now present to you, which is marked Defendant's Exhibit "D" for identification, and ask you from whom you received that letter?

A. This is a letter from Mr. F. L. Underwood.

Q. Did you receive it through the regular mail?

A. I received this and all my other letters through the regular mail.

Q. You identify that as his signature there, do you?     A. I do.

Judge WINN.—Now, may it please the Court, I offer this letter in evidence. [521—371]

The COURT.—Have it marked and I will pass on it later on.

Q. Now, I will hand you another letter which is marked for identification Defendant's Exhibit "E," and ask you from whom you received that letter?

A. I received this letter from William M. Ebner.

Q. And what is the date of that letter, Mr. Tripp?

A. September 25th, 1909.

Q. You recognize that as Mr Ebner's handwriting, do you, the signature?     A. I saw him sign it.

Judge WINN.—Now, I offer this letter in evidence, if your Honor please.

Q. Now, at the time Mr. Ebner signed this letter which you have just identified and which the Court has allowed to be marked as an offered exhibit, do you know what position Ebner was occupying with the Ebner Gold Mining Company at that time?



(Testimony of Herman Tripp.)

A. I think he was president of the company.

Q. I hand you this letter, marked Defendant's Exhibit "F" for identification, and ask you if that is a letter of your own?     A. This is my letter.

Q. That was in reply to what letter?

A. To the letter written to me by Mr. Ebner.

Judge WINN.—Now, I offer this letter in evidence, if your Honor please.

Mr. HELLENTHAL.—I make no objection to the letter F, and withdraw my objections to letter E.

(Whereupon said letters were received in evidence and marked respectively Defendant's Exhibits "E" and "F.")

The COURT.—Now, as to the letter marked exhibit "D" for identification, I will not pass on that at this time.

Judge WINN.—Then, that is all, your Honor, with this witness. [522—372]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. The assessment work was done under those letters, as stated in this letter, on the Cape Horn No. 2, wasn't it?     A. We did the work at that time.

Q. As stated in those letters?

A. I don't remember whether that was all of it or not; that was part of the assessment work.

Q. That was done?     A. Yes.

Mr. HELLENTHAL.—That's all.

Question by Judge WINN.—There is one question, Mr. Tripp—Mr. Hellenthal asked you once or twice

(Testimony of Herman Tripp.)

about whether or not you recorded that water location notice; to whom did you deliver that for recording?

A. I gave it to you.

(Questions by Mr. HELLENTHAL.)

Q. When did you give it to Judge Winn?

A. After I came back from the westward.

Q. How long after you posted it?

A. I don't remember just how long it was now.

Q. How long after August 3d was it?

A. I gave it to Judge Winn as soon as I found it.

Q. That was about the time that the notice was recorded, wasn't it?

A. I don't know when he had it recorded.

Q. About how long after October 3d, 1910, was it that you gave the notice to Judge Winn—after August 3d, 1910—how long after that?

A. I don't think I got back here until October sometime—I don't remember now.

Q. The following October? [523—373]

A. I don't know; I wouldn't say positively how long I was away, but I left somewhere about the 11th of August.

Q. Judge Winn asked you for it, didn't he?

A. My wife told me that Judge Winn had been up to my house and they ransacked everything in the shape of documents and papers to find that notice.

Q. That isn't what I asked you, Mr. Tripp—Judge Winn asked you for the notice, didn't he?

A. He asked me before I left, but I couldn't find it.

(Testimony of Herman Tripp.)

Q. Didn't know what had happened to it?

A. Didn't know where I put it.

Q. Why didn't you go up and get another copy off the posted notice?

A. Because that posted copy was torn down.

Q. This was the only notice that was left,—the copy you had, is that right?

A. The notice had been torn down somewhere about the last of July.

Q. And the only one you could record was the one that was lost?

A. It wasn't lost; it was in my safe in the C. W. Young Company's building.

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(Witness excused.) [524—374]

The defendant, to further maintain the issues on its part, introduced as a witness FRED RADEL, who, then being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of Fred Radel, for Defendant.**

Direct Examination.

(By Judge WINN.)

Q. What is your full name, Mr. Radel?

A. Fred R. Radel.

Q. When did you first come to Juneau?

A. September 10, 1910.

Q. You know Mr. Angus Mackay, do you?

A. Yes, sir.

(Testimony of Fred Radel.)

Q. Did you get acquainted with Mr. Mackay after you came here in September, 1910?

A. I got acquainted on the boat with Mr. Mackay, coming up on the boat.

Q. Came up on the same boat that Mr. Mackay came up on?      A. Yes, sir.

Q. Now, I will ask you if sometime during the month of September you were doing any work up on the Ebner property.

A. Yes, the first work I did on the Ebner property was on the flume grade; that was the first work I did.

Q. You know where that new high-line flume is built over the Ebner property?      A. Yes, sir.

Q. About what time in September did you go up there, do you remember?

A. I was only in town about a day, I started somewhere, I guess, about the 11th or 12th, somewhere around that time, to work on there. [525—375]

Q. On what part of the flume grade of the new high-line flume of the Ebner Company did you commence working?

A. At the time I was there I guess there was in the neighborhood of probably two or three hundred feet brushed away, and it was about three or four hundred feet away from the dam where I started in.

Q. They had, you say, commenced at the dam and going down the creek done some brushing out at that time?      A. Yes, sir.

Q. What date was that?



(Testimony of Fred Radel.)

A. Some where around the 11th or 12th of September.

Q. How long did you work on that grade there, Mr. Radel, for the new high-line flume?

A. I worked on there about pretty near two weeks, I imagine; I am not sure that it was two weeks; I don't think it was two weeks; I did different odd jobs, wasn't right there very long, only doing different work.

Q. Now, I will ask you, Mr. Radel, if you remember of a fence being built along on the regular Basin road up there at a point between the Basin road and the Ebner compressor plant—not exactly between them, but in that vicinity.

A. Yes, sir; I helped build it myself.

Q. Do you remember what date you built that fence?

A. Well, it was about in the end of September, somewhere around that part, latter part of September.

Q. Who assisted you in building that fence, Mr. Radel?

A. Mr. Middleton at that time, and a man by the name of Greenwood; there was three of us helped bring the boards, and we put in some posts, and then got some regular one by fives and anything we could pick up to make a good fence out of it; there was Mr. Henderson at the time waiting for us. [526—376]

Q. What was Henderson doing there?

A. He posted up the trespass notice.

(Testimony of Fred Radel.)

Q. Where did he post it with reference to the fence?

A. Right at one corner of the fence.

Q. Now, I will ask you if you remember of there being at that time kind of a roadway cutting out from the main Basin road and leading down towards the air-compressor?

A. You mean was there at one time?

Q. I say at this time that that notice was posted and the fence was built do you remember of there being kind of an old roadway that led down from the main Basin road toward the aid compressor or down toward Gold Creek?

A. As I understand, there had been an old road but when I started to work there of course it was in very bad shape and I was sent down there to fix it up, and I did that myself.

Q. Where was this fence built with reference to that little piece of road?

A. This fence was built right at the junction of the main road and the road that went down to the compressor; right on the point.

Q. Do you remember substantially what that notice stated that was on the fence?

A. A general trespass notice, simply stating that nobody could go on the property; regular trespass notice.

Q. Now, did you see any of the Alaska-Juneau people up there at work before the fence was put up?

(Testimony of Fred Radel.)

A. I just seen them down around putting in that tunnel at the time.

Q. You mean the water tunnel down toward where the air-compressor is built, down toward Snow Slide gulch?

A. Where the little cabin is at the corner.

Q. You had seen them at that time doing some work in and about [527—377] there?

Q. On what day, Mr. Radell, did you know of any of the Alaska-Juneau people coming up, say, in the vicinity of this fence that you built?

A. We had the fence all built and the trespass notice up, and I was still working on this little piece of road yet, and I saw three or four men coming through the brush, and I had orders from Mr. Mackay if anybody came on the property to report it, which I did.

Q. To whom did you report about the men that you saw coming up through the brush?

A. Mr. Black was then the foreman up there at the time, and naturally enough I would report it to him first.

Q. Did you say anything to Hunsaker about it?

A. Yes, we both went up to Hunsaker—Mr. Black went down the main road and Mr. Hunsaker and I went down by the compressor way, down by the creek.

Q. Were there any orders given those men by either you or Hunsaker, or by Hunsaker in your presence?

(Testimony of Fred Radel.)

A. We went down the creek and there was these men working there and Mr. Hunsaker told them they were on patented ground and they would have to leave, so they did, they went very peacefully.

Q. Where did these men next work there in the creek with reference to the air-compressor when they were ordered off?

A. I went down several times afterwards right around in that neighborhood of the present dam, where the Alaska-Juneau is at the present time.

Q. Was it right above or below the present dam?

A. A little above it, if I remember right—a little above it. [528—378]

Q. Do you know who these men were?

A. I know one was the foreman at the time—I know one was.

Q. Foreman of the Alaska-Juneau Company?

A. Well, he had charge of that part of the work.

Q. What is his name, do you remember it?

A. I think his name was Henderson; he had a very heavy mustache; I know it was Henderson.

Q. Did you ever see any lumber or tools or anything of that kind near the Basin road there or in the vicinity near where you put this fence up?

A. There was some tools in the road, I should judge going along the little grade, along the road, about a couple hundred feet or three hundred feet on the other side of the fence going towards Juneau.

Q. Who had left those timbers?

A. The teamsters.

Q. Were they for the Ebner Company?



(Testimony of Fred Radel.)

A. No, they were not for the Ebner Company.

Q. About what date was this that these men came down there between the air-compressor and the dam and were ordered off by Hans Hanson?

A. The time we went down and told them?

Q. About what date; yes, sir.

A. About the 1st of October, right around there it must have been; I couldn't really state the exact date because I had so many different little jobs to attend to that I don't know the exact date.

Q. It was before the 3d of October, wasn't it, Mr. Radel?

A. No, it was about the 1st of October, because I know I went down to the mill grade about the 2d, around in that vicinity.

Q. You were not working up in this place in the vicinity of the air-compressor at the time Mackay and the other people were [529—379] arrested?

A. No, I was down at the mill grade at the time.

Q. Near Shady Bend?      A. Near Shady Bend.

Q. I will ask you while you were up there, Mr. Radel, if you became acquainted with Mr. O. M. Harri, the lame man?

A. Yes, I did, because I used to kind of look after the picks and steel, took them up to the Ebner mine because we didn't have any shop down there at the mill grade, and I used to go up there every day with picks, and I got acquainted with him because I used to see him on the road all the time.

Q. I will ask you if along about Cape Horn you met Mr. O. M. Hari there sometime about the 1st or 2d of

(Testimony of Fred Radel.)

October, or in that neighborhood, and had a conversation with him which was substantially as follows: That you asked Harri who sent him up there and for what purpose he had been sent there; and that he told you that Kinzie had sent him up there to look over and see what, if any, work had been done on the Parish No. 2 claim, and for Harri to find out whether in his opinion the assessment work had been kept up on this claim, and that Harri stated to you substantially that he had been sent up there for that purpose and he had reported back to Mr. Kinzie that there had been some assessment work done on the Parish No. 2 claim?

A. I was going up the road, really didn't ask him at all, he just simply voluntarily told me that part of it himself, simply said that Mr. Kinzie had sent him—

(Interrupted on account of objection which was overruled.)

Q. Go ahead, Fred.

A. I met him on the road—I was going up with a bunch of picks—and the conversation came up and he said that Mr. Kinzie had sent him and another man up there—he didn't state the man's name—to look over and see if the Ebner [530—380] people had done the required amount of work or see if they had done any assessment work on the property and that he should report it back to Mr. Kinzie—that was the conversation that occurred.

Q. That was substantially the conversation?

A. Yes, sir.

(Testimony of Fred Radel.)

Q. Where was it, Mr. Radel, that you saw this man Henderson coming through the bushes, where was it with reference to the air-compressor building?

A. When I saw them down there I guess they were a hundred feet, going through the brush; I looked down and it looked as if they weren't there, and I saw the brush moving and I didn't know what it was at first until I saw their heads bob up and I saw shovels on their backs, and I knew none of our men were going that way and I presumed they didn't want anybody to see them.

The COURT.—Yon presumed what?

A. I presumed from the way they were going through the brush they didn't want anybody to see them.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Where were you at that time, Mr. Radel?

A. I was on this little road that was leading from the main road to the air-compressor.

Q. When you speak of the air-compressor you mean that building that is in the gulch there?

A. Right in the basin, and I was working on that road leading from the main road down to the creek, cleaning it off.

Q. Down the creek—that is a little ways above where the Alaska-Juneau dam now is? [531—381]

A. Where do you mean—where this road is?

Q. Yes.

(Testimony of Fred Radel.)

A. This road leads from the main road down to the creek; there is kind of a tower there, I believe the Alaska-Gastineau has a power tower there; at the time I was working from the main road down to the power tower.

Q. The road strikes the creek a little way above the present Alaska-Juneau dam, is that right?

A. Going toward the old Compressor House?

Q. Yes; further up the creek and a little above it.

A. I don't get your meaning at all.

Q. The road leads from the Basin road to the creek?     A. Yes.

Q. And leaves the Basin road at about Cape Horn somewhere?     A. What, the little road?

Q. Yes.     A. No, sir.

Q. Where does it leave the Basin road?

A. Up above Cape Horn; it is only a short road; the road from the main road down to the creek I imagine is a road about 250 feet long.

Q. A little short piece of road?     A. Yes.

Q. And leads from the main road in the neighborhood of Cape Horn?

A. It is way above Cape Horn.

Q. But leads down to the creek?     A. Yes, sir.

Q. And strikes the creek between the Alaska-Juneau dam and the place where there is a compressor?     A. The old compressor-house.

Q. The building in which there was a compressor.

A. Yes, sir.

Q. And it was on that road that you were working?



(Testimony of Fred Radel.)

Q. The same road that you built the fence?

A. Yes, sir.

Q. The fence is built clear across the road?

A. Across this little road.

Q. Now, where was it across this little road that the fence was built? A. Right at the head.

Q. And the notice was posted on there for trespassers to keep off? A. Yes, sir.

Q. The purpose of building that fence was to keep the Alaska-Juneau people away?

A. There was nothing said to me; it was simply a trespass notice and there was no instructions given me.

Q. There wasn't any other road that you built fences on, was there, Fred?

A. Not that I had anything to do with.

Mr. HELLENTHAL.—That's all.

Redirect Examination.

(By Judge WINN.)

Q. Now, I think, Mr. Hellenthal has another road in his mind, Fred—this road that you are talking about is nowhere near Cape Horn, is it?

A. No, no, nowhere near Cape Horn.

Q. It is almost between the air-compressor of the Ebner mill and the upper Basin road, isn't it?

A. Yes, sir.

Q. It is right down in that vicinity?

A. Yes, sir.

Judge WINN.—That's all. [533—383]

(Testimony of Fred Radel.)

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Let's see if we can fix it on this map?

A. I don't think you can, it is only a short road.

Q. The spot marked "New Ebner Mill," that is the place where the compressor was?

A. That is the new compressor.

Q. No, that is the old compressor down that gulch; you see the place where the Alaska-Juneau dam is marked on this map here; now, where on the creek would the road strike the creek?

A. The road was kind of a—we will say this is the old compressor-house right here; the road came out like this, right down the main road, right down a little gulch about 200 feet.

Q. Well, now, let's mark with the letter A the place on the creek about where that road struck the creek?

A. I would rather have the road marked on the map.

The COURT.—He might locate on the creek where the road struck the creek with reference to what is marked "New Ebner Mill."

A. This is the new Ebner mill and excavation for enlargement; I am talking about the old Ebner mill.

Q. This is the building where the compressor is?

A. Yes the new compressor-house at the present time is down here.

Q. That is where the new compressor-house is, away down here?

A. Yes, that is where the compressor-house is at the present time, right down in here (indicating)

(Testimony of Fred Radel.)

would be the old compressor-house.

Q. The place where the old compressor-house is is the place that is marked on this map "New Ebner Mill"? A. No.

Q. How do you know it isn't? [534—384]

A. Because I know it isn't.

Q. Where is the old compressor-house?

A. Right down here at the new Ebner mill they have got a new compressor.

Judge WINN.—The witness has evidently got the new Ebner mill mixed up with the compressor at Shady Bend.

Q. This is what we call an air-compressor here, a big old building standing in the gulch, an air-compressor and a pipe-line leading down from the top of the hill; now here is the place where the Alaska-Juneau dam is; the old Ebner mill was up here, marked "Old Ebner Mill"—this is a building which was built and the stamps were never put in, and the compressor was put in—now, with reference to that building marked "New Ebner Mill" and the Alaska-Juneau dam will you mark there with the letter A the approximate point where that road struck the creek?

A. This road here—here was the mill—right in here is the creek, and it runs across Gold Creek, about like that, the road did, over the creek.

Judge WINN.—Commences on the letter D—

A. This is the Government road here, and this is where it ran from the main Government road.

Q. Mark with the letter A the place where the little

(Testimony of Fred Radel.)

road struck the creek as near as you can.

A. Well, right here.

Q. That is the letter A? A. Yes, sir.

Q. That is about where the letter D is in the word "Gold"? A. Yes.

Q. Now, mark with the letter D the place as near as you can, where the road left the Basin road.

A. The little road went right into the main road just like any road going into any place. [535—385]

The COURT.—Is there any main road on that map?

A. No, sir.

The COURT.—Then he cannot mark it.

Q. I hand you here a map—look at that and say if you would be able to locate the thing on that map?

(Not answered because of objection.)

Q. I call your attention to a map that is marked Defendant's Exhibit "A" in another trial; it is a map of the Ebner Gold Mining Company's claims near Juneau; I just want to ask you if you could locate it on that map? A. I cannot tell.

Q. You cannot tell from that map?

A. No, I cannot tell.

Q. Anyway, the road there led over a matter of two or three hundred feet from the creek up to the basin road? A. Yes, sir.

Q. Runs in an up-creek direction from the Basin road?

A. Say, we are going up there, it would be going right down to the old mill.

Q. The road leads down the creek? A. Yes, sir.



(Testimony of Fred Radel.)

Q. And runs in an up-creek direction.

A. Yes, sir.

Q. To two or three hundred feet up the creek, where it strikes the basin road?      A. Yes, sir.

Q. And that is the road you built the fence on?

A. Yes, sir.

Q. And it strikes the creek at the place you have marked?      A. Yes, sir.

Mr. HELLENTHAL.—That's all.

(Witness excused.)      [536—386]

The defendant, further to maintain the issues upon its part, introduced as a witness JOHN B. MARSHALL, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of John B. Marshall, for Defendant.**

**Direct Examination.**

(By Judge WINN.)

Q. Mr. Marshall, what is your official position?

A. I am United States Commissioner, ex-officio District Recorder.

Q. As such recorder you are custodian of the records of the Juneau Recording District?

A. I am.

Q. I will ask you if you have with you here some of the records of your office?

A. I have brought up the records which you requested me to bring.

Q. I will ask you to refer to Book 16 of Lodes, page 104.      A. Book 16 of Lodes, page 104?

(Testimony of John B. Marshall.)

Q. Yes.

A. That is the Taku Queen—that is the location notice of the Taku Queen lode claim.

Q. What is the date of that?

A. The date of it is June 27, 1901.

Q. And the date of recording?

A. The date of the recording—that is, the date it was filed for record is July 18, 1901.

Q. Who is the locator?     A. Thomas J. McCully.

Q. Have you Book 15 of Lodes, Mr. Marshall?

A. Yes, sir.

Judge WINN.—I will state, your Honor, at this time we will refer to the books and pages and later on will have certified copies made by the Recorder.

[537—387]

Q. At page 406?

A. Page 406 shows a location by Thomas J. McCully, located August 21, 1900, of the Auk Chief lode claim; filed for record September 3, 1900.

Q. Look at page 172 of Book 23 of Deeds, Mr. Marshall.

A. That is a deed from H. T. Tripp to H. W. Hoops.

Q. What property does it convey, Mr. Marshall?

A. The Taku Queen, the Auk Chief, the Fractional claim, the Parish mill site and the water right to 10,000 inches of water in Gold Creek.

Q. What is the date of that deed, Mr. Marshall?

A. The 4th of April, 1912.

Q. You may now look at Book 25 of Deeds, page 1.

A. That is a deed from Herman W. Hoops to Sid-

(Testimony of John B. Marshall.)

ney J. Jennings, conveying the Taku Queen, the Auk Chief, the Fractional claim, Parish mill site and the water right.

Q. What is the date of that deed?

A. That is the 10th of March, 1913, and recorded on July 11, 1914.

Q. In the same book, Mr. Marshall, page 4.

A. Deed from Sidney J. Jennings to the Ebner Gold Mining Company of the Taku Queen, the Auk Chief, the Fractional claim, the Parish mill site and the water right, dated the 21st day of May, 1914, filed for record July 11, 1914.

Q. Recorded on the last-named date, was it not?

A. Filed for record at that time.

Q. Same book, page 2.

A. Deed from the Alaska-Ebner Gold Mines Company to the Ebner Gold Mining Company, dated May 21, 1914, conveying the Taku Queen, Auk Chief, Fractional claim, the Parish mill site and water right; filed for record on July 11, 1914.

Q. That is the Alaska-Ebner Gold Mines Company to the Ebner Gold Mining Company?

A. Yes, sir.

Mr. HELLENTHAL.—What is the date of that conveyance? [538—388]

A. The date of the conveyance is the 21st of May, 1914.

Q. Have you got Book 19 of Lodes, Mr. Marshall, with you? A. Yes.

Q. Page 304.

A. That shows the location by William M. Ebner,

(Testimony of John B. Marshall.)

on the 11th day of September, 1908, of the Cape Horn No. 2 Lode mining claim, filed for record December 7, 1908.

Q. Now, Book 11 of Lodes, page 8.

A. That is the location by William M. Ebner, Fred Micho and George Duke of the Cape Horn Lode; dated July 27, 1895; filed for record on the 8th of August, 1895.

Q. Will you look at Book 23 of Deeds, page 419?

A. That is a quitclaim deed from William M. Ebner to H. W. Martin, dated the 31st of January, 1913, conveying the Cape Horn No. 2 lode mining claim; filed for record February 17, 1913.

Q. Now, Book 20 of Lodes, Mr. Marshall, page 104.

A. That is the location notice by Albert E. Graham of the Mackay lode claim; located the 12th of June, 1911; recorded June 24, 1911.

Q. You have two deeds in your pocket, have you, Mr. Marshall?     A. Yes.

Q. What are those two deeds?

A. These were just filed for record today and have not been compared as yet to ascertain that the recording is correct—they have been recorded. One is a deed, dated the 5th of July, 1911, from Albert E. Graham to William M. Ebner, conveying the Mackay lode; that will appear, in fact it is now recorded on page 17 of Book 25 of Deeds. The other is dated the 26th of February, 1914, from William M. Ebner to the Ebner Gold Mining Company, and conveys the Mackay lode; that will appear of record on page 18 of Book 25 of Deeds.



(Testimony of John B. Marshall.)

Q. Will you examine Book 23 of Deeds again, at page 172, and give [539—389] me the date of recording?

A. April 4, 1912—that is the date of recording; the deed is the same date.

Mr. HELLENTHAL.—What deed is that?

A. From Tripp to Hoops.

Judge WINN.—That will be all, your Honor, at present. I think there are some intervening papers, and the remaining title we will straighten out as soon as we get to it.

(Witness excused.) [540—390]

The defendant, to further maintain the issues on its part, introduced as a witness F. J. WETTRICK, who, then being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. J. Wettrick, for Defendant.**

**Direct Examination.**

(By Judge WINN.)

Q. Mr. Wettrick, where do you live?

A. Juneau.

Q. Your name is F. W. Wettrick?

A. F. J. Wettrick.

Q. How long have you resided in the town of Juneau, Mr. Wettrick? A. About seven years.

Q. What has been your business, Mr. Wettrick, the principal part of the time you have been in Juneau? A. That of an engineer and surveyor.

Q. I will ask you, Mr. Wettrick, if in the surveying

(Testimony of F. J. Wettrick.)

that you have been doing and assisting in for the last six or seven years, if you have become pretty well acquainted with the property *know* as the Ebner property or Ebner Gold Mining Company's property in Silver Bow Basin near Juneau?     A. I have.

Q. Have you also become familiar with the surroundings—adjacent outlying properties around the Alaska-Juneau Company's properties?     A. Yes.

Q. Are you somewhat familiar with the properties that are claimed by the Alaska-Juneau Gold Mining Company.     A. Yes.

Q. I will ask you if you are also familiar with the patented and [541—391] unpatented property of the Ebner Gold Mining Company?     A. I am.

Q. I will ask you if you are also acquainted with what is known as the Humboldt property?

A. Yes, sir.

Q. Now, there is some property adjoining on to the Alaska-Juneau property that is owned by Maloney and some others, is there not?     A. Yes.

Q. How many claims are there in that bunch, Mr. Wettrick?     A. Three.

Q. Now, I call your attention, Mr. Wettrick, to Plaintiff's Exhibit No. 1 in this case, and ask you in the first place what, if any property that belongs to Maloney and others are included in the exterior boundary lines of what is claimed to be the property of the Alaska-Juneau Company on this map and plat?

A. The Royal, Apex and Enterprise Lode Claims.

Q. Where are they approximately on this map?

A. They join the Ebner property on the end lines

(Testimony of F. J. Wettrick.)

of the Lotta, Taku and Crown Point.

Q. About what place, approximately, on this map, Mr. Wettrick, of the Plaintiff, and indicate it in some way so that it will get into the record, do these claims that you have just spoken of lie?

A. What is its position on the map?

Q. Yes, so that the stenographer can understand it and get some description of it by either letter, figure or something, so it will get into the record?

A. The claims occupy a space just commencing at the southwest corner of these claims—

Q. What claims?

A. I am now speaking of the Maloney claim, the Royal, Apex and [542—392] Enterprise. Beginning at the southwest corner of that group, which is identical with the south corner of the Lotta claim—they adjoin the Ebner property—running up along the line which passes through the letter N in “Juneau,” and G in “Enlargement” to the point which is a period after the word “Co.” for company, approximately; and from this common line they extend southeasterly the full length of the claim, being, if I remember right, about 1200 feet; they are not exactly full length claim but form approximately a square, which joins on with the Ebner property as I have indicated.

Q. Joins on to the easterly or southeasterly exterior boundary line of this map wherein we find “Ebner G. M. Co.”? A. Yes, sir.

Q. Now, are those claims patented or unpatented

(Testimony of F. J. Wettrick.)

claims that you have testified concerning?

A. Patented claims.

Q. Now, I will ask you, Mr. Wettrick, what, if any, unpatented claims that are claimed or belong to the Alaska-Juneau Company group of properties, have the plaintiff in this case included within its exterior boundary lines of what they claim to be the property of the Alaska-Juneau Gold Mining Company?

A. Well, their map as referred to as Plaintiff's Exhibit No. 1, includes all of the claims of the Ebner Company that are not patented, of which there are quite a number—a good many—Auk Chief, Taku Queen, Cape Horn, Cape Horn No. 2, Parish No. 1 and Parish No. 2, and Eureka, together with some mill sites that are unpatented; it does not show the patented property known as the Humboldt property, which I believe to be owned by the Ebner Company.

Q. Where is the Humboldt on this exhibit, Mr. Wettrick?

A. The Humboldt property covers a greater portion of the area [543—393] here covered by the word "Property of the Alaska-Juneau G. M. Co."

Mr. HELLENTHAL.—What part of the map, Mr. Wettrick? A. The westerly side of the map.

Q. Do you know of a claim there also which is referred to as the Mackay claim, which we have just offered in some papers concerning? A. Yes.

Q. What ground does that cover, Mr. Wettrick?

A. It covers the ground immediately below the line here given as the limit of the Ebner property, southerly limit of the Ebner property.



(Testimony of F. J. Wettrick.)

Q. What does it cover with reference to what is called the Parish No. 2 claim?

A. It covers the Parish No. 2 claim.

Q. Now, is there any other property on there, Mr. Wettrick, that belongs to anyone else, or that is included in this as the property of the Alaska-Juneau Gold Mining Company,—that is, to the best of your ability to ascertain it from this map?     A. Yes.

Q. What is that?

A. I haven't used the scale in a determination of the position of these claims, but it shows plainly that some of the properties of the Alaska-Gastineau Company are included within the exterior limits of what is here called the property of the Alaska-Juneau Gold Mining Company.

Q. At what point or place on this exhibit?

A. On the northwesterly line that indicates the property of the Alaska-Juneau Gold Mining Company, and I believe also in the vicinity of Gold Creek near Cape Horn.

Q. That is as far as you have made an examination of this map, is it, Mr. Wettrick?     [544—394]

A. Yes.

Q. Is any of this property of the Alaska-Gastineau Company, would you say, that is included within these exterior boundary lines patented, that you know of?     A. I don't recollect as to that.

Q. Now, I have had posted on this board a map which we have had marked for identification Defendant's Exhibit S—I will ask you if you made that drawing?

(Testimony of F. J. Wettrick.)

A. It was made by me and under my direction.

Q. And what data did you use in making up this map and plat?

A. The field notes of patent surveys, and also field notes of surveys made by myself on and over the properties.

Q. Are you acquainted with the patented mining claims that belong to the Ebner Company that are on this map, Mr. Wettrick?      A. Yes.

Q. I wish you would name them?

A. They are the Jewel, Golden Fleece, Grand Review, Crown Point, Keystone, Taku, which is sometimes known as the Taku Gold and Silver, the Lotta and the Humboldt Lode.

Q. What unpatented claims?

A. The Parish No. 1 and 2, the Auk Chief, the Auk Queen, Cape Horn, Cape Horn No. 2, Cape Horn Extension and Eureka Lodes.

Q. Now, when you say the Parish No. 1 there is a portion of that claim that has been patented under the application of the plaintiff company, has it not?

A. Yes, sir.

Q. And can you indicate on this map the part of portion that was patented in that Colorado Claim?

A. That is the portion that is shown on the Parish No. 1 in broken lines containing the legend, "Patented by Alaska-Juneau Gold Mining Company and deeded to Ebner Gold Mining Company."

Q. Now, I will ask you if the other objects and things placed upon this map are correct as they appear upon the ground? [545—395]

(Testimony of F. J. Wettrick.)

A. They are correct within a reasonable limit of accuracy.

Q. Would you name some of the objects and point them out to the Court that you have on there; such, for instance, as Gold Creek, flume line, any roads, and things of that kind?

A. Gold Creek is shown in blue running through the claims; wagon roads are also marked; the new flume of the Ebner Company is shown in the broken lines marked "New Flume," terminating at the penstock, which is also marked "Penstock"; shows the new tunnel of the Ebner Company, together with some of the workings; shows adjacent claims, claims adjacent to the Ebner Company's properties, as, for instance, the claim owned by Maloney, Delaney's heirs and Gerr's heirs; shows the locations of the buildings around on the Ebner property.

Q. Also down on Cape Horn does it show the compressor plant house and the 5-stamp mill?

A. Yes, sir; it shows the location of the mouth of the tunnel, the portal, together with the buildings around the mill, including the mill, the compressor house, change-house, blacksmith-house, and so forth; also contains the general position of the Alaska-Juneau flume and dam.

Q. And then you show some of the outlying properties—for instance, the Etta and Forrest Lodes—they belong to what adjoining group?

A. That belongs to the Dora group; it is shown here and marked.

Q. And what are those two claims just above the

(Testimony of F. J. Wettrick.)

Humboldt Lode—do they belong to the Dora group?

A. That is the Summit and the Bluff, belonging to the same group.

Q. Have you indicated on this map the flume of the plaintiff company?

A. Yes, sir; from the penstock at Gold Creek to its dam on the dividing line between the Lotta and the Parish claims; yes. [546—396]

Q. You haven't shown any of their flume line this side of that down to their mill on the beach?

A. No, sir.

Q. Now, Mr. Wettrick, I will ask you if you remember the coming to Juneau of Mr. Bent and his party sometime in July, 1910? A. Yes, sir.

Q. With whom have you been associated in the business of surveying?

A. Mr. L. G. Hill for sometime.

Q. What, if anything, about the 1st of August, 1910, or the 2d or 3d, did you and Mr. Hill do upon the Ebner property?

The COURT.—What time, Judge Winn?

Judge WINN.—1910, along about the 1st of August, 1910.

A. We went upon the Ebner ground in company with Mr. Bent and others of his party and made some observations and secured some data and information which we afterwards used in laying out the scheme of development that they had under discussion.

Q. You remember what day you first went up there or what day Mr. Hill first went up there with them, do you? A. I believe it was August 3d?



(Testimony of F. J. Wettrick.)

Q. Were you up with Hill on August 3d?

A. Yes, sir.

Q. And was Bent there?      A. Yes, sir.

Q. Was Mr. Mackay?      A. Yes.

Q. Mr. Hill?      A. Yes.

Q. Mr. O'Boyle and some of the rest of the gentlemen of the party?

A. I believe Mr. O'Boyle was there too, yes.

Q. What, if anything did you and Hill do on that day, Mr. Wettrick?

A. We projected the level from the old Ebner flume, which is on [547—397] the south bank of the creek.

Q. On what mining claim and at what point as your initial point did you commence?

A. On the Keystone and the Taku Lode, we projected that level of the flume as then established across the creek to the hillside where the present high-line flume of the Ebner Company is now situated; we also took some observations as to the amount of fall that was available from the Ebner dam to the point in Gold Creek somewhere along the upper end line of the Taku Lode.

Q. Anything else on that day?

A. No, not that I now recall.

Q. What was your purpose for doing this, Mr. Wettrick?

A. In order to secure data necessary to determine how the scheme of development should best be carried out.

Q. Did you have any particular directions about

(Testimony of F. J. Wettrick.)

taking that level, or have in view any particular designation as to where that line was going to be extended that you took levels on that day?

A. Yes, sir.

Q. What was it?

A. The reason we projected levels across from the old flume to the opposite side of the canyon was to determine what line of grade it would follow along the hillside there leading from Shady Bend towards Cape Horn on the Cape Horn Lode.

Q. Had you had any instructions from any of these parties to make such an examination?

A. Yes, sir.

Q. What was the object of taking such levels, and so forth, in order to project it on down toward Shady Bend—what was the object of that?

A. In order to avail ourselves of the increased head of water we could get in that way and therefore develop more power [548—398] at that point at Shady Bend.

Q. What was the power to be developed there for?

A. For use in connection with the operations that were planned and discussed.

Q. Discussed by whom?

A. By Mr. Bent *had* his party, including Mr. Mackay.

Q. Was there anything done about the present mill site of the company, where it was graded off for a mill, and down at the workings which you have indicated here "5-Stamp Mill" on the Cape Horn No. 2 Lode Claim? A. On that particular day?

(Testimony of F. J. Wettrick.)

Q. On that particular day.

A. There was no actual work down there, no; the matter of placing the mill and making an excavation was discussed.

Q. At what point was it discussed, about that excavation?

A. Somewhere in the vicinity of where the present excavation is.

Q. About what part of the day did you or the party that you have mentioned put in on this property on the 3d day of August?

A. I think I was up there during the entire day, if I remember rightly.

Q. Mr. Hill, too?      A. Yes.

Q. Have you told now all that you did—did you just take those levels across the creek near the old Ebner workings, or did you go over any of the rest of the property that day?

A. We did walk over the property considerably in order to see it.

Q. At whose instigation did you do this?

A. At the instigation of the same parties that we started work for.

Q. Now, what was done, if anything, on the 4th of August, 1910?

A. On the 4th I believe we continued work of the same nature—that is to say we ran a line of levels from the elevation of [549—399] the old Ebner dam down to Shady Bend in order to determine the head of water available at some point up the hillside on Shady Bend.

(Testimony of F. J. Wettrick.)

Q. Was Mr. Bent and his party along, or did you and Mr. Hill work alone up there, do you remember?

A. Mr. Hill and I were there with some assistants, but I don't remember if Mr. Bent and his party were along.

Q. Did you have some assistants with you that day?

A. Yes; I don't believe Mr. Bent, Mr. Mackay or his party was with us that day.

Q. Did you have anybody assisting you?

A. I think we had an axe man.

Q. Did you put in all of that day up there?

A. Yes, I think so.

Q. Was anything done in or about the mill site on Cape Horn No. 2 at that time?

A. I don't exactly remember unless I look at my note-book, but my impression is that we staked out the mill site, part of which was later excavated.

Q. Was Mr. Mackay up there, as you remember, on the 4th?

A. I wouldn't be positive about that; I think he was.

Q. In the meantime, Mr. Wettrick, were you making any reports, or giving the Bent party the benefit of any data that you had collected on the 3d and 4th?

A. Yes, sir; we were in conference at the hotel and also in our office more or less of the time they stayed here.

Q. You say you had an axe man up there, what was the axe man for—what did he do?

A. He prepared lines that we desired to run, cleared out the brush so that it would be possible to



(Testimony of F. J. Wettrick.)

continue our work of levelling.

Q. What did you do on the 5th, if anything, *or* August, 1907?

A. I don't remember in detail now what we did on the 5th. [550—400]

Q. Were you on the property?

A. My impression is that we continued the same kind of work.

Q. How long did you continue this work that you were doing, Mr. Wettrick, in this manner?

A. For a considerable length of time.

Q. Well, what do you call a considerable length of time; when did you get your data so that you reported it to Mr. Bent finally—approximately, Mr. Wettrick?

A. Oh, we generally reported the results of what our observations were in the evening, and the matters were discussed; the following day we returned and executed some plan of operation we had decided upon the night before.

Q. After having these conferences with the Bent party? A. Yes.

Q. Now, did this work that you were doing then constitute the survey, or did you afterwards make a complete survey and establish any particular grade for the flume line?

A. We established a preliminary grade, began using the preliminary grade for putting men to work on excavation on the 6th of August, I believe; the data obtained prior to that was, in a general way, to find out where this projected line of operations would lead us and what kind of country we would go over;

(Testimony of F. J. Wettrick.)

then when we had done that, on the 6th we started to run out the flume grade, and I believe set the grade stakes for clearing—that is my best recollection.

Q. Who else was up there along about the 6th or 7th, if you remember, excepting you and Mr. Hill?

A. We had some assistants, the names of whom I do not now recall.

Q. What were they doing, Mr. Wettrick, these people who were with you.

A. They did the axing necessary to carrying the line down along the hillside where the present flume is now located in order to enable us to get through with our level lines. [551—401]

Q. What day was it that I understood you to say that you arrived at a conclusion as to where you would have started that grade for the new flume line? A. On the 6th.

Q. Then, about how long did it take you after that survey to put your grade stakes in and have the brush cut away—that is, approximately how long were you doing that?

A. Oh, that took us only a few days to run the preliminary lines there; of course, after the clearing had been completed another line of grade stakes was given for them to start the excavation.

Q. Do you remember approximately what time this excavation and the grading was commenced on your established line?

A. Not exactly the date, but it was almost immediately after the commencement of running the lines.

(Testimony of F. J. Wettrick.)

Q. The first running of the lines? A. Yes.

(Whereupon court adjourned until 10 o'clock tomorrow morning.)

MORNING SESSION,

July 28, 1914, 10 A. M.

F. J. WETTRICK, on the witness-stand.

Direct Examination (Cont'd.)

Q. Last evening when you left the witness-stand, Mr. Wettrick, you were asked to take this map and plat to your office, marked for identification Defendant's Exhibit "S," and place thereon any further data that might occur to you—have you placed anything further on this map and plat since the adjournment of court last night?

A. Nothing except that I extended the name "Ebner Working Tunnel" to its present length, and made a few notations, such as numbering corners, which I omitted doing before; [552—402] I didn't have time to do this properly, I made one or two alterations in the sketching of Gold Creek down near the Last Chance placers somewhere.

Q. What is the length, Mr. Wettrick, of this main working tunnel which you say you extended last night? A. About 3500 feet.

Q. You have made this map to what scale?

A. Two hundred feet to the inch.

Judge WINN.—Now, we will offer this map and plat in evidence, your Honor please.

(Whereupon said map was received in evidence and marked Defendant's Exhibit "S.")

(Testimony of F. J. Wettrick.)

Q. Mr. Wettrick, when was the first time that you were ever on the Ebner property to do any work?

A. 1908.

Q. Who was in company with you when you were there in 1908?

A. Mr. Ebner, Mr. Tripp, Mr. Hill, and I think a fellow by the name of Oscar Harri, I think.

Q. What were you doing on this property then?

A. I was running and measuring up some lines on the Parish No. 2 lode and the Lotta lode.

Q. The Parish No. 2 lode has a part of its upper side line common with the lower side line of the Lotta on this exhibit?

A. Yes, they are contiguous claims.

Q. What, if anything, did you do along the lower side line of the Lotta claim when you and the other parties were there in 1908?

A. We brushed out the lower side line of the Lotta claim, which was also the upper side line of the Parish No. 2, and ran a line through the brush and brushed it out from corner No. 3 of Parish No. 2 lode to corner No. 4 of the same lode.

Q. In what manner did you brush out that lower side line of the Lotta? [553—403]

A. We cut down the alder and cleared out the line to a considerable extent so as to show the boundary lines and enable one to get over it with a transit and chain, and chain it properly.

Q. Did you make a survey of the Parish No. 2 around at that time? A. Yes.

Q. I will ask you to state what, if any, corner posts



(Testimony of F. J. Wettrick.)

and monuments you found at that time upon any of the corners on the side lines of the Lotta lode claim?

A. I found corner No. 5 standing in place, and post No. 4, which is the central end stake, being the south-east end of the Lotta claim through there, and got my course from it, and turned the angle on the side line of the Parish claim in a northwesterly direction and in a southeasterly direction, and from that main course I deflected all the angles that gave me the lines that I ran on the Parish No. 2 claim.

Q. Now, what, if anything, on the other side of the creek in the way of monuments or posts did you find on the Lotta claim at that time?

A. There was a witness corner on the side line of the Lotta near the Gold Creek road, right, in fact, under the Gold Creek bridge planking just at the edge of the planking of the Basin road.

Q. Was it under the planking then?

A. Just alongside the planking.

Q. The planking has been extended there now?

A. It is now under the road, because the road has been widened.

Q. Has that road been widened since August 1st, 1910?

A. Yes, that was widened a year or two ago.

Q. On August 1st, 1910, the road was narrower at this point?

A. Yes, and the corner posts were alongside the road at that time.

Q. Now, you say that is a witness post?

(Testimony of F. J. Wettrick.)

A. Yes. [554—404]

Q. What do you mean by that?

A. It is a corner line of the Lotta lode which is common with the Parish No. 2 lode; that is not set at the outer corner point; the outer corner point being somewhat steep there, inaccessible, or being in a position that makes it impossible to perpetuate an outer corner; the distance is placed there calling for the outer corner; that is the witness corner belonging to the Forrest lode on the side line of the Lotta.

Q. Have you marked this particular stake on the side line of the Lotta—you haven't numbered or marked that on this exhibit, have you?

A. No, I haven't, I omitted that.

Q. I wish you would do that.

A. I cannot do that without referring to my notes, which I haven't here.

Q. Could you ascertain those from your notes?

A. Yes, from my field note-book is what I mean.

Q. If you will do that at noon, Mr. Wettrick, so we can mark that. The other corner post of the Lotta in 1908, being further up the hill from this stake that you have mentioned, did you find that in 1908?

A. I don't now remember whether I went up to that or not; I wouldn't say as to that.

Q. Now, Mr. Wettrick, you were again up there after 1908 at what time? A. In 1910.

Q. Did you notice at that time whether or not this Parish end line on the lower side line of the Lotta could be seen? A. It could.

(Testimony of F. J. Wettrick.)

Q. Well, was it hard or easy? Was it hard to see it or was it plain?

A. There was a very easily discernible line running up on the [555—405] side line that one could see from the wagon road leading up to the Perseverance mine.

Q. That is the main-traveled road that leads to the Perseverance mine, and also runs up to the mine of the Alaska-Juneau Company?

A. The Ebner and the Alaska-Juneau.

Q. And is the main-traveled road between Juneau and the Alaska-Juneau mine?

A. Yes, sir; the only road.

Q. This time that you were on there in 1910, about what time was it?

A. Sometime during the summer, I don't now remember the exact date—I have that too.

Q. Was it before or after August 1st?

A. In 1910 you mean? A. Yes, in 1910.

A. I thought you were talking about 1908; in 1910 I was there in August.

Q. I will ask you if you saw any of these corner posts established in 1910 that you have just described on the lower side of the Lotta claim?

A. I saw the same ones that I saw in 1908.

Q. Did you make any survey up there of any property in 1910—that is, in which you had to run out any of the side lines or end lines of the Lotta or Parish No. 2? A. Yes, sir; I did.

Q. What claim, if any, did you, during that season, survey for patent?

(Testimony of F. J. Wettrick.)

A. The Parish No. 2 lode claim.

Q. Was that the occasion that caused you to see these stakes on the Lotta lode claim?

A. That was one of them; I had occasion to go on that ground for other reasons a considerable number of times, and saw [556—406] those stakes.

Q. I will ask you if you have since that time established any permanent monuments, or any other monuments where these stakes on the lower side lines of the Lotta were? A. Since that time?

Q. Yes.

A. Yes, I caused these corner posts, by which I mean corner posts No. 5 and No. 6 of the Lotta, to be set in concrete, surrounded by a concrete base at exactly the same places they were; in fact, I didn't pull them up.

Q. What led you to go up and establish those corners at that time?

A. In order to perpetuate them.

Q. Did you know anything about the decision of Judge Cushman in the matter? A. Yes.

The COURT.—I didn't catch the date you said you went up there to perpetuate the corners.

A. 1914.

Q. That was after the decision of Judge Cushman in the ejectment suit? A. Yes.

Q. Did you establish those according to that decision of the Court, and the boundaries as set forth in it?

A. Yes, sir; exactly in the same place that they were at all times—they were left in the same places.



(Testimony of F. J. Wettrick.)

Q. Do you remember just what time—did you fix that date in 1910 that you observed this brushed out line on the lower side line of the Lotta claim?

A. Well, the exact date that I went up there that I now remember was August 3d, 4th and 5th, and a number of days thereafter.

Q. I will ask you if there had been any other brushing done on that side line since 1908 up to the time that you stood across the creek and succeeded in observing the lower side line as it had been previously brushed out? [557—407]

A. There had not been any done to my knowledge and I base that upon the fact that we were doing the surveying and engineering work for the Ebner Company, and I don't think any other surveyors were on the ground—certainly not to my knowledge.

Q. You said you were up there several times between 1908 and 1910?

A. Oh, yes; quite frequently.

Q. I will ask you, Mr. Wettrick, if you were up there last Sunday along the Basin road on the left-hand side of the creek going up the creek?

A. Yes, sir; I was.

Q. I will ask you if that line can be seen from a good many points along the Basin road there?

A. Yes, it can; it is very plainly visible.

Q. Now, Mr. Wettrick, while we are on this point of the Lotta lode claim I will hand you a paper, which will be page 1809 of Volume 5 of Cause No. 2155 of the Circuit Court of Appeals, being that of the Ebner Gold Mining Company against the Alaska-

(Testimony of F. J. Wettrick.)

Juneau Gold Mining Company,—we will remove it from that page—I ask you if you know what that paper is? A. I do.

Q. What is it?

A. It is a copy of the official plat showing the patented claims, some of the patented claims of the Ebner Gold Mining Company.

Judge WINN.—I will offer this paper in evidence.

(Whereupon said paper was received in evidence and marked Defendant's Exhibit "T.")

Q. When the Lotta patented claim was patented, were there any other claims patented with it along in the same survey, Mr. Wettrick?

A. Yes, there were a few others patented along with it.

Q. What are the names of those? [558—408]

A. The names are the Crown Point, Survey No. 90; Keystone, Survey No. 89; The Taku, Survey No. 88; the Lotta, Survey No. 87.

The COURT.—Does that show when they were patented?

A. No, that part of the official plat was removed, evidently, to make the page fit.

Judge WINN.—We will get the date of that patent, your Honor—it was some three or four years ago.

Q. I will ask you if on this Defendant's Exhibit "T" if these are the same properties as shown on the Exhibit "S"? A. Yes, sir; they are.

Q. In the patent field-notes as they appear from this exhibit "T," Mr. Wettrick, what ties, if any, do

(Testimony of F. J. Wettrick.)

you find that are made to any of the monuments or posts or lines in the Lotta survey No. 87?

A. Well, in the Lotta survey alone there are—

Q. I will modify the question—give the ties that there are in that survey—that is all one survey, isn't it?

A. It is a group, yes.

Q. Surveyed together and patented together?

A. Yes, as a group.

Q. Now, all right—give now all the ties that would in anywise assist in finding the boundary lines of the Lotta lode claim?

The COURT.—You mean the ties according to this official plat?

Judge WINN.—Yes, sir.

The COURT.—Are they on the map?

The WITNESS.—Yes.

The Court.—Won't they speak for themselves?

Judge WINN.—I suppose they would, your Honor, but I want to show that those same objects were on there in 1910.

(Question reframed because of objection.)

Q. I will ask you, Mr. Wettrick, if it appears from this exhibit that you have in your hand, which is Defendant's Exhibit "T," [559—409] if there are any ties shown the Lotta lode claim to any natural monuments or objects upon the ground?

A. There are.

Q. What are they?

A. The Lotta claim is tied to the Taku Gold and Silver, which is a contiguous claim, by actual courses and distances, and the common corner posts of the

(Testimony of F. J. Wettrick.)

Taku Gold and Silver and the Lotta claim are common as being a certain distance from a 10-stamp mill and a certain distance from tunnels upon the ground; the tie to the monuments, of course, is also given on the patent plat.

Q. That is to a United States Government monument?

A. No, sir; United States mineral monument No. 2, Silver Bow Basin. There are other tunnels over the area of the claims, all of which are tied by courses and distances to some corner of these claims. Having in one tie, or having located one corner, the courses and distances from that corner is then got to the other corners over the claim and in that way the courses are re-established—that is to say, it makes no difference whether the tunnel is found on the Taku Gold and Silver or on the Lotta, the tie is useful in relocating any one of the corner posts of any of the claims in the group.

Q. I will ask you, Mr. Wettrick, if you know whether or not there is a plat attached to the patent in this case, of the official survey?

A. A plat attached to the patent?

Q. Yes, sir, or sketch.

A. I don't know whether there is one attached to the patent or not.

Q. I will ask you, Mr. Wettrick, if you have examined the field-notes of that survey and whether or not the field-notes of that survey have these ties in it which you have just explained? [560—410]

A. Yes, I have examined the field-notes and I have



(Testimony of F. J. Wettrick.)

tied in the field-notes as delineated on the map here; the ties in the field-notes are given with a little more detail than they are on the plat.

Q. Now, Mr. Wettrick, I will ask you if a surveyor, or anyone who is conversant with surveying, could have taken those field-notes and gone upon the ground and have located this claim in the year of 1910? A. I think they could; yes.

Q. Did you make any examination in 1910 to ascertain as to whether or not any of those ties to natural objects which you have just mentioned in your testimony, were then upon the ground?

A. In 1910?

Q. Yes, sir.

A. Yes, I re-ran a great many of the different ties to the natural objects.

Q. What natural objects did you find on the ground that were called for in the field-notes of the official survey of the Lotta patented claim, with the other claims that were patented with it?

A. Besides finding a great many corner posts of the claims in place, I found the tie to the stamp-mill and one or two tunnels there to be fairly accurate; within a reasonable limit of accuracy, at any rate.

Judge WINN.—Do you have any objection, Mr. Hellenthal, to this patent as it stands in this record going in without getting another certified copy?

Mr. HELLENTHAL.—I have no objection to that, Judge Winn.

Judge WINN.—Now, I will offer in evidence, if your Honor please, the copy of the patent which has

(Testimony of F. J. Wettrick.)

just been indicated, and we will remove it from this printed record as soon as we get time— [561—411] it commences on page 1771 and winds up on page 1783.

(Whereupon the said patent was admitted in evidence and marked Defendant's Exhibit "U.")

Q. Now, I will ask you to take this exhibit, being a copy of the patent, Mr. Wettrick, and look over that and see if any of these monuments and ties that you have just referred to are referred to in that patent?

A. Yes, they are in here in the field-notes of the Lotta and others in that group.

Q. You have not compared that plat that is attached to it there with the official plat of the survey, have you, Mr. Wettrick?

A. I don't think I did just recently, I think I did some time ago, but I don't now recall it.

Q. Did you ever examine the records down there to see if there was attached and filed any plat, or is it just sketched in the record by the recorder—have you ever examined the record?

A. Yes, I have had occasion to examine the record sometime ago, but I don't now remember what it looks like.

Q. Now, have you given all the natural objects or monuments that were on the ground when you were there in 1910, Mr. Wettrick, that are called for in the field-notes of the survey for patent of the Lotta claim and the claims that were patented with it?

A. No, I haven't mentioned all I found on the ground.

(Testimony of F. J. Wettrick.)

Q. Go ahead and mention what, in addition, you found?

A. The corner No. 1 of the Lotta, which is a common corner with the Etta, was upon the ground in 1909 as well as in 1908, and I believe is still there—it was in 1912, anyway; corner number 6, the southeast corner of the mill site which is now on the Taku Gold and Silver lode is also standing; corner No. 2 of the Keystone was standing upon the ground, and corner No. 2 of the Crown Point was standing upon the ground, as well as [562—412] corners 3 and 4 of the Webster mill site; corner No. 3 of the Lotta lode was also found upon the ground, as well as corner No. 4 and 5 of the Lotta.

Q. Were these corners that you have just mentioned there in 1908, or did you go over the entire property at that time?

A. I didn't go over the entire property; I know that corner No. 2 was there in 1908.

Q. No. 2 of what?

A. No. 2 of the Keystone and 2 of the Crown Point; corner No. 4 of the Lotta was on the ground, as well as corner No. 5; whether I had occasion to use that I don't now remember, but I remember of having occasion to use those just mentioned.

Q. I will ask you, Mr. Wettrick, how, if in any way, any of those corner posts that were on the corners or boundary lines of the Lotta lode claim were marked? A. They were all marked.

Q. In 1908? A. Yes.

Q. In 1910? A. Yes.

(Testimony of F. J. Wettrick.)

Q. When you were upon the ground to make the survey?     A. Yes.

The COURT.—Which corner?

A. Corners of the Lotta.

The COURT.—All four corners of the Lotta—I mean from corner No. 5 up to that witness stake—that is, say corner No. 5 to the witness stake, were standing in 1908?

A. Yes, sir.

Q. And was the line brushed between them?

A. It was.

Q. In 1908?     A. Yes, sir. [563—413]

Q. And in 1910, when you were there in August?

A. Yes, sir.

Q. Brushed out according to that plat in the same place that you have given it there on the plat?

A. Exactly the same place; also lines 5 and 4 were partially brushed out.

Q. And that is the lower side line of the Lotta that you were testifying concerning?

A. Yes, the lower side line and the southwest end line of the Lotta.

Q. And it is on that lower side line that you perpetuated those monuments after Judge Cushman's decision?     A. Yes, sir.

Q. I will ask you when you went up there in 1908, Mr. Wettrick, as to whether or not you could stand on the ground and see this lower side line of the Lotta claim before you brushed it out in 1908, do you remember?

A. I don't remember, Judge, about that.



(Testimony of F. J. Wettrick.)

Q. That is the year you and Tripp and the rest of them brushed it out? A. Yes.

Q. When you went back in 1910 how was it?

A. It was quite visible then; I had no trouble in finding it.

Q. I will ask you to look at this photograph, which is marked Defendant's Exhibit "V" for identification, and state what object is shown upon that photograph.

A. Corner No. 6, Survey No. 87, being the northwest corner post of the Lotta lode claim.

Q. Does that show the corner post as it was there in 1910, Mr. Wettrick, and prior to August 1st?

A. Yes, sir.

Q. That is a photograph of it—were you present when it was taken? [564—414]

A. I was.

Judge WINN.—We now offer this in evidence, if your Honor please.

Q. (By Mr. HELLENTHAL.) That is the northwest, I understand, Mr. Wettrick?

A. Yes, that is the northwest corner.

Q. That is one of the upper stakes?

A. Yes, up above the road and flume.

Mr. HELLENTHAL.—No objection to it.

(Whereupon said photograph was received in evidence and marked Defendant's Exhibit "V.")

Q. I hand you Defendant's Exhibit "W" for identification, and ask you what object is shown in that picture connected with the survey?

A. The southwest corner post of the Lotta, being

(Testimony of F. J. Wettrick.)

post No. 5 as marked upon the map.

Q. Was that corner post there in 1908?

A. It was.

Q. Was it there in 1910 when you went up there?

A. Yes, sir; it was.

The COURT.—Which corner was that, now?

A. Corner No. 5 of the Lotta, being the southwest corner post of the Lotta.

Mr. HELLENTHAL.—Isn't that the southeast corner?

A. No, I call that the southwest corner; anyway it is corner No. 5 of the Lotta.

Q. Is that photograph a good photograph of the corner stake as you saw it there upon the ground both in 1908 and 1910?

A. Yes, that is a photograph of that corner.

Judge WINN.—We now offer that in evidence, if your Honor please.

The WITNESS.—It also shows the side line of the Lotta going toward corner No. 6.

Mr. HELLENTHAL.—No objection. [565—415]

Q. You say that photograph shows the side line of the Lotta? A. Yes, sir.

Q. Now, when you made that survey in 1910 did you do some brushing out around in this vicinity, where that post is set, as shown in the photograph?

A. Yes; I did some brushing out there.

Q. What are those heavy looking stubs there, Mr. Wettrick—did you cut those off in 1910 or are some of those the old stubs that had been cut off some time prior to that time?

(Testimony of F. J. Wettrick.)

A. The old alder stumps—the larger stumps are old alder stumps that had been cut previously; it was just the smaller and newer alder that we cut at that time, for the most part anyway.

Q. You have been on this property quite frequently since the year of 1910, and up and down the road, have you not, Mr. Wettrick? A. Yes, sir.

Q. Do you know whether or not there has been any brushing out on that lower side line of the Lotta claim since the year 1910?

A. I haven't had occasion to have any of those lines brushed out until just within the last day or two, I walked over the line and trampled down and cut out a little of the smaller brush.

Q. Was that yesterday or this morning?

A. That was this morning; that is, only over a portion of the line; the greater portion of the line I didn't touch at all.

Q. You were down to gather some data this morning? A. Yes.

Q. Now, I wish you would explain to the Court, if there is any information to give, why it is or how it is that a line, after it is brushed out, even though there is a lot of little small underbrush in it, can be distinguished by anyone standing [566—416] at a distance—is there any distinguishing feature that would cause one to notice it? A. Yes, quite.

Q. What is it?

A. For instance, the hillside there is covered with a heavy alder growth in the neighborhood of 10 or 12 feet high, that give the appearance—a very dark ap-

(Testimony of F. J. Wettrick.)

pearance; the part that is cut out, if the alder is cut away through there, the newer growth is a lighter green, a much lighter green, and therefor forms a very plain line in the swath of the cutting of the alder, so that the slashing of the alders is followed by a light growth of fern and material like that; it is a lighter color of green, and makes it very distinctly visible.

Q. Now, this little cutting out that you did this morning up there, do you know of any further cutting out on this line since the year of 1910?

A. I do not.

Q. I will ask you if there is any part of the line that was brushed out in 1908 that was not brushed out in 1910?      A. Yes, there was.

Q. I will ask you if that part of the lower side line of the Lotta claim that was brushed out in 1908 and not brushed out in 1910 is now visible upon the ground?

A. Well, all of the Lotta side line was brushed out; the side line that was not brushed out is the side line of the Parish No. 1—that is a continuation of the same course as the lower side line of the Lotta.

Q. That is the line that you have testified to that you brushed out in 1908, that line of the Parish No. 2 lode?

A. Yes, the common line between the Royal and the Parish No. 1 was brushed out in 1908 for a considerable distance up the hill toward Snow Slide Gulch.



(Testimony of F. J. Wettrick.)

Q. And that was not brushed out in 1910? [567—417]      A. No.

Q. I will ask you if that line is still visible and can be seen upon the ground?

A. Very, very plain; very plainly to be seen, I think from the Lotta.

Q. Now, I will ask you to take this exhibit which is marked Defendant's Exhibit "X," and ask you what it is a photograph of?

A. This is another photograph of corner No. 5 of the Lotta showing the end line of the Lotta this time.

Q. Show the Court on this map and plat where the corner post is?

A. Plaintiff's Exhibit "X" for identification shows corner number 5 of the Lotta and end line of the Lotta claim, the same being line 5-4 up over the hill.

Q. I will ask you if that stake was there in 1908?

A. It was.

Q. And was it when you went on there in 1910?

A. Yes, sir.

Q. Same place?      A. Yes, sir.

Judge WINN.—We now offer both of these exhibits in evidence, "W" and "X," which have been identified.

Mr. HELLENTHAL.—Those are both pictures of corner No. 5?

The WITNESS.—Yes.

Mr. HELLENTHAL.—When were these pictures taken, Mr. Wettrick?

A. In 1910; I believe in November.

(Testimony of F. J. Wettrick.)

Q. These two photographs are not photographs of the same corner, are they?

A. Yes, taken at different times.

The COURT.—I understand you to say that this is the same stake for different lines, one is a side line and one is an end line?

A. Exhibit “W” shows the lower side line, and “X” shows the end line. [568—418]

(Whereupon said pictures were received in evidence and marked respectively Defendant’s Exhibits “W” and “X.”)

Q. I will hand you this Exhibit “W” and ask you if there is any other object, other than the corner post there, that you desire to explain, that is in any way connected of course with any of the side or end lines of the Lotta lode claim?

A. Nothing, except it shows the lower side line running over toward the witness corner—that is all, I think.

Q. Now, I will show you Defendant’s Exhibit “X”—is there any object on there besides the corner post that you desire to explain?

A. It shows the small cabin on the Lotta claim, not very distinctly on that picture; that cabin is shown upon Plaintiff’s Exhibit “S” and marked “Cabin” near the southeast end line of the Lotta.

Q. I will ask you if that cabin was there in 1908 when you were on the ground? A. It was.

Q. In 1910? A. Yes, sir.

Q. Is there any tie made to that cabin in the field notes of the Lotta? A. I don’t believe there is.

(Testimony of F. J. Wettrick.)

Q. I will hand you Defendant's Exhibit "Y," for identification, and ask you what objects are shown there?

A. Shows corner No. 5 of the Lotta again, and the cabin just referred to with more clearness.

Q. That is a better photograph than the other one?

A. Yes, sir.

Q. Was that corner post in the same place both years you were up there, Mr. Wettrick, 1908 and 1910? A. Yes, sir. [569—419]

Q. And the same relative position of the cabin to the post both years? A. Yes, sir.

Judge WINN.—I offer this in evidence, if your Honor please, as it is a better photograph than the other one.

(Whereupon said picture was received in evidence and marked Defendant's Exhibit "Y.")

Q. Now, Mr. Wettrick, leaving the Lotta claim, we will get back to the matters where we left off yesterday. I believe your testimony yesterday covered up until about the 6th or 7th of August; I will ask you about how frequently you were on this Ebner property after the 6th of August, in 1910?

A. Very frequently, almost daily.

Q. What was your object in being on the property?

A. In executing the contract we had with representatives of the Ebner Company, being Mr. Bent, for doing the engineering work.

Q. What, if any, surveying did you do in laying

(Testimony of F. J. Wettrick.)

out this big tunnel which you have put on this map and plat of the defendant?

A. We located the mill and that tunnel both for elevation and position.

Q. When did you do that surveying?

A. That particular feature I don't remember, but it was right in line with the location of the mill site there and determining the position of the tunnel, I believe.

Q. Now, after work was commenced upon the building of this tunnel, under whose supervision was the construction of that tunnel, Mr. Wettrick, if you know?     A. Mr. Mackay's.

Q. At one time when Mr. Mackay was away, I believe you had charge of some work up there, did you, somewhere?     A. Yes.

Q. Now, I will ask you as to how the building of this high line [570—420] flume of the Ebner Company progressed after the work was commenced on it, after the early part of August?

A. The grade was cleared off and then graded and as soon as the grade was ready to receive the flume the mudsills were laid and the flume built.

Q. Do you remember approximately how many men you saw up there working on this flume line during that summer?

A. Working at any particular time, you mean?

Q. Yes, sir; all along the flume line.

A. Oh, all the way from 12 to 30, somewhere thereabout; I think when I had charge of that flume construction in Mr. Mackay's absence I had 15 men on



(Testimony of F. J. Wettrick.)

the flume at one end, and repairing the grade at the other about as many more.

Q. Do you remember approximately when this flume line was completed?

A. No, I don't remember exactly when; I would have to look it up.

Q. When did you finish laying out and surveying this tunnel, approximately, Mr. Wettrick?

A. Sometime in the fall of 1910.

Q. You don't remember when the work was first commenced of driving the tunnel?

A. No, I don't remember.

Q. Do you remember when they first commenced grading off the mill site down on the Cape Horn No. 2?

A. No, I don't remember that.

Q. Was that work progressing during that year?

A. Oh, yes, I think it was.

Q. Now, Mr. Wettrick, were you up on this ground on October 3d, and if not, about what date were you there in October?

The COURT.—Which ground, Judge Winn?

Judge WINN.—The Ebner ground.

A. If I refer to my log-book, I can tell you exactly, —in October I was there October 4th the first time in October. [571—421]

Q. Commencing at the Ebner dam, the old Ebner dam, and also the dam which is the intake for the new high-line flume, and going down the creek, about what work was done along on that part of the flume line on October 3d—that is, I mean how much was completed?

(Testimony of F. J. Wettrick.)

A. The grade was more or less completed for a distance of almost, I should say, 1,000 to 1,200 feet.

Q. I will ask you if you saw any tent in and about this flume line and grade when you were up there on October 4th?     A. Yes, I did.

Q. Who was occupying that tent?

A. I didn't go over to the tent on the 4th, but I later went over there and found Mr. Harri in the tent.

Q. I will ask you if there was ever any change made of the location of that tent from the time it was put there until it was later on in the fall removed?

A. No, the tent was never changed, to my knowledge, until it was removed.

Q. Well, you would know whether it was or not, if it had been changed?

A. Yes, sir, I would; there was no clearing for the tent; it was on the grade, and if the tent had been moved one would have seen the clearing made for the tent.

Q. Where was it put with reference to this part of the flume line you graded off; from flume line down to the creek?

A. I think it was on that grade.

Q. I will hand you a photograph, Mr. Wettrick, and ask you what that is a photograph of?

A. This is a photograph of the Ebner high-line flume, intake and flume, showing the tent of Mr. Harri, as well as some of the old works of the Ebner Company, old flume?

(Testimony of F. J. Wettrick.)

Q. Do you remember approximately when this photograph was taken, Mr. Wettrick? [572—422]

A. Yes, I can tell exactly, if I can refer to my memorandum—that was taken on November 4th.

The COURT.—Of what year?

A. 1910.

Judge WINN.—We offer this in evidence, if your Honor please, as showing part of the flume and tent and other objects there.

(Whereupon said photograph was received in evidence and marked Defendant's Exhibit "Z.")

Q. I will hand you another photograph which was taken of this tent near by and ask you if that is a good photograph of the objects shown on there?

A. Very good, yes.

Q. What does it show on there besides the tent?

A. Shows the contour we made with the flume as we finally constructed it, and shows also the old grade of the flume.

Q. Is there any fence up there?

A. Yes, there is a one-board fence behind the tent of Harri.

Q. Do you remember what time that photograph was taken? A. That was taken on the same day.

Mr. HELLENTHAL.—November 4th, 1910?

A. November 4th, 1910.

Q. Neither one of these pictures shows the dam of the company, do they, Mr. Wettrick—on this exhibit that has been offered in evidence as Defendant's Exhibit "Z" does that show anything except the flume line there?

(Testimony of F. J. Wettrick.)

A. Oh, yes; in addition to those things I have stated it shows the old Ebner dam extending across Gold Creek.

Q. This you just testified from was exhibit "Z," was it not, Mr. Wettrick?

A. That was exhibit "Z."

Q. You were not up there on the 3d of October?

A. No.

Q. I will ask you, Mr. Wettrick, as to what date it was that the [573—423] first part of the flume was laid near the dam?

A. You are speaking of the Ebner flume?

Q. Yes, the Ebner flume.

A. On October 11th I continued the flume construction, and at that time the headgate had been prepared and had been installed, and one or two lengths of flume, I don't exactly remember the date, between the 4th and 5th—I don't remember how often I was up there, but on the 11th I took charge of the flume construction in Mr. Mackay's absence.

Q. When you went up on the 11th you found two pieces of the flume in at the dam?

A. One or two, and the headgate was in.

Q. How was the grade there, were they on top of the ground or set down in a ditch that had been excavated?

A. We had to excavate a trench there to receive them.

Q. Do you know when that trench was cut there at the dam?      A. No, I don't, exactly.

Q. You don't remember when that was cut?



(Testimony of F. J. Wettrick.)

A. No.

Q. Which one of the group of the Ebner claims was this tent of Harri's upon?

(Question not answered because of objection.)

Q. Upon which one of those claims, as marked upon exhibit "S," was this tent on?

A. The tent was found on the claim shown on exhibit "S" as the fractional placer, unpatented.

Q. Now, you stated that in Mr. Mackay's absence you had charge of some work up there, Mr. Wettrick—do you remember what date that was?

A. I think I began that particular work of extending the flume construction on October 11th.

Q. On October 11th? A. Yes, sir. [574—424]

Q. Was that the time Mr. Mackay went away?

A. About that time; I don't think he left that day, but somewhere around that time.

Q. I will ask you, Mr. Wettrick, if you know as to whether or not on October 3d the Alaska-Juneau had any of its flume line just across the creek that extends from its dam down to its air-compressor, constructed? A. On October 3d?

Q. Yes. A. I wasn't up there on the 3d.

Q. Well, then, on the 4th.

A. On the 4th, I don't recall seeing any of it.

Q. Now, you were there in the vicinity of their flume, and the defendant's company's flume, in the month of October, and on the 11th day of October you had charge of the work up there?

A. Yes, sir.

Q. I will ask you what part of the plaintiff com-

(Testimony of F. J. Wettrick.)

pany's line or flume was constructed on that date.

A. On the 11th?

Q. Yes, sir.

The COURT.—What date are you fixing?

Judge WINN.—October 11th, 1910.

The COURT.—Your question is what part of the plaintiff's flume was constructed at that time?

Judge WINN.—Yes, sir.

A. I don't recall to what extent now.

Q. Do you remember having noticed the plaintiff company's flume extending between the two points I indicated in the other question, down between the month of October or November?

A. Yes, I remember seeing the Alaska-Juneau flume grade and a portion of its flume during that month, but I cannot exactly fix the date in my mind now when I first saw it. [575—425]

Q. There was a time you and some other parties were arrested up there, Mr. Wettrick; I will ask you fixing that as the date, what portion of the plaintiff's flume was constructed at that time?

A. Oh, I should say probably 120 feet to 150 feet—not completed, but the mudsills were laid, and the floor was being laid and one or two boards along the side; a portion of it was completed from the head-gate but not very much.

Q. Now, the witness Harri has testified in this case that on October 3d there was work done on the plaintiff company's flume from the air-compressor at Snow Slide gulch, and the grade to some extent completed down within about 300 feet of the dam as

(Testimony of F. J. Wettrick.)

it was afterwards constructed, and that part which was graded, about one-half way down from the air-pressor flume was laid and completed—I will ask you if that was true on October 3d.

A. On October 11th.

Q. October 4th or 3d?

A. No, that is not true; there wasn't that much completed.

Q. Mr. Wettrick, do you know where the plaintiff company commenced constructing its first dam at Gold Creek? A. Yes, sir.

Q. Do you know where their dam is now?

A. Yes, sir.

Q. You were up there this morning?

A. Yes, sir.

Q. I will ask you as to what the condition of that dam was, and what position it was in at the time this case was tried before Judge Cushman, the Basin Case, which was No. 2155 of the Circuit Court of Appeals? A. The position of the dam?

Q. Yes. [576—426]

A. The dam was at that time built across the lower side line of the Lotta, some of the timbers being almost wholly upon the Lotta claim.

Q. And was that at a date after or before October 3d, 1910?

A. Well, that was the way it was during the trial.

Q. Well, you know when Mackay and those people were arrested on the 3d of October, don't you, Mr. Wettrick? A. Yes.

Q. Well, you know there wasn't any dam in the

(Testimony of F. J. Wettrick.)

creek at that time—that is, constructed?

A. I said I wasn't there on the 3d; I was there on the 4th; the dam had not been completed the way it was during the trial.

Q. Was it after October 3d or prior to October 3d that you say that the dam was constructed in the manner you have described?

A. After October 3d.

Q. And about what portion of it was on the Lotta claim?     A. About one-half of it.

Q. You never did see these pieces of flume that Mr. Kinzie contends that he got in the creek up there on October 3d, did you Mr. Wettrick?

A. No, I don't think I did.

Q. Now, Mr. Wettrick, I will ask you if you have recently made any survey or taken any measurements to ascertain as to what the position that dam of the plaintiff company's is now with reference to the Lotta patented claim?

A. I did, located its position this morning.

Q. What did you find about it?

A. Find that some of the timbers are still over the side line of the Lotta claim, extend over the side line of the Lotta claim onto the Lotta. [577—427]

Q. How is its position now with respect to the time that case was on trial before Judge Cushman, 2155 of the Circuit Court of Appeals?

A. The dam has been changed somewhat since then.

Q. Is there more or less of it on the Lotta now than there was then?



(Testimony of F. J. Wettrick.)

A. Less of it on the Lotta claim.

Q. I don't believe, Mr. Wettrick, that you gave the date when you completed the survey of the flume line, the Ebner high-flume line—will you give that date?

A. I began—well, I completed the survey of the flume line in three or four days, I testified, after I commenced, and I commenced on August 6th, but I necessarily re-ran it again sometime after that in order to re-establish the grade stakes that were removed and obliterated by the blasting and the firing of the grade line.

Q. Do you remember the date that the men went to work on there—that is, any other men besides yourself and Mr. Hill, on the survey proper?

A. Yes; immediately after the survey was commenced the grade line was established, and they were put to work clearing off the line along the flume and the grade.

Q. I will ask you how this work was continued with respect to diligence or otherwise?

A. They were working on the flume grade all the time with a considerable number of men and were very diligent, I should say.

Q. I will ask you if you know where Harri's bunk-house is? A. Yes, I do.

Q. Just point out to the Court on this exhibit "S" where it is located, on what mining claim.

A. It is located on the Cape Horn lode claim, at the northeast corner of that claim, and marked Alaska-Juneau cabin on [578—428] that exhibit.

(Testimony of F. J. Wettrick.)

Q. I will ask you, Mr. Wettrick, if you ever made any survey or measurements to ascertain the correctness of the position of this cabin of Harri?

A. Yes, I went upon the ground with the particular point in view of locating it upon the ground, its position upon the mining claim that it falls upon.

Q. When did you do that?

A. Did that in 1910, sometime in the fall of 1910.

Q. Now, I will hand you a plat, Mr. Wettrick, which is marked in this case for identification as Defendant's Exhibit "C," and ask you if you know whose map and plat that is and have you ever seen it before?

A. Yes, that is a copy of a map—of a map introduced by the Alaska-Juneau Company at the former trial.

Q. That is the trial of Cause No. 2155 of the Circuit Court of Appeals, which is entitled the Ebner Gold Mining Company vs. the Alaska-Juneau Gold Mining Company?      A. Yes.

Judge WINN.—For the purpose, your Honor, of showing the location of the cabin on this plat we offer this plat in evidence.

(Whereupon said plat was received in evidence and marked Defendant's Exhibit "B.")

Q. Did you, while you had this exhibit in your hand, observe where the cabin is located and on what claim it is located?      A. I did.

Q. What claim is it located upon?

A. On the Cape Horn Lode, the same one I have shown it to be upon on Defendant's Exhibit "S."

(Testimony of F. J. Wettrick.)

Q. How is it marked, the cabin of Harri marked on this exhibit?     A. Marked cabin.

Mr. HELLENTHAL.—It speaks for itself. [579—429]

Q. Now, I will ask you, Mr. Wettrick, what, if anything, you know about a road that leads from the old Jualpa mine, the brushed out roadway, up to this cabin that you have just testified about.

A. There is an old road that leads directly to that cabin; there is an old road that leads from the Jualpa dam over the Colorado and goes along the hillside over the Ebner line.

Q. About what part of that road, if you know, is traversed going up to Harri's cabin, as you leave the Jualpa Company's dam?

The COURT.—What part of the road?

Judge WINN.—What part of the old road, your Honor,—part is old and part is new.

A. One can reach Harri's cabin by going on the old road for a distance of about one-third of the way to the cabin, anyway.

Q. How was that old road, if you know, prior to August 1st and on about August 1st, that is, could it be seen upon the ground where it is laid out, or any indications that there was a road there?

A. Yes, sir; I traveled over it in 1908 myself.

Q. I will ask you as to what size, if any, the brush was that had grown upon that road in 1908 and 1910.

A. There was a little small brush along the side.

Q. Now, when you and Mr. Hill were up there doing your work on October 3d, did you see anybody

(Testimony of F. J. Wettrick.)

working on this road, or in that vicinity?

A. No, sir.

Q. I will ask you, Mr. Wettrick, if you have ever been over this flume line of the plaintiff company extending from its air-compressor down to its dam?

A. Yes, I have. [580—430]

Q. About how often have you been in that vicinity since they commenced the construction of the dam, since August 1st, 1910?

A. Well, very frequently in the summer and fall of 1910.

Q. Along in the year of 1910 did you see any road or paths that had been cut out up and down both sides of Gold Creek in that vicinity?

A. Paths cut out?

Q. Yes, and cleared away.

A. There were no paths cut out, no; there was a path down along the creek to this bedrock and slide rock all the way; I have gone up there myself numerous times in going up and down the creek and going over the Parish claim.

Q. When you were working in Mr. Mackay's place and had charge of some men, where, with respect to this flume line of the plaintiff company, between its present dam and air-compressor, were your people working?

A. We had a few men, two men, I believe, doing assessment work on the Parish lode claim; about 50 feet from the grade of the Alaska-Juneau work, which was later their flume.

Q. The flume line of the plaintiff extending across



(Testimony of F. J. Wettrick.)

what is called on this Defendant's Exhibit the Parish No. 2 lode claim?      A. Yes.

Q. I will ask you as to when you were in and about there, whether you saw any trails that the plaintiff had been making in and about the creek over the Parish No. 2 lode claim?

A. I saw a little trail coming from Harri's cabin up to the flume grade.

Q. Did you see any other trails that were made where there was a lot of brush cut out and things of that kind from this section on the Parish claim?  
[581—431]

A. No, sir; I didn't see any trails that had been recently cut.

Q. Would you have seen them if they had been, do you think?

A. I rather think so, yes; because I was over the ground pretty thoroughly.

Q. Do you know, Mr. Wettrick, in what manner most of the lumber was delivered to the site where the flume was built—that is, with respect to whether it was carried up over this trail from the Jualpa dam by the way of Harri's tent, or otherwise?

A. Well, a considerable portion of the lumber had been taken down from the Basin road leading to the Ebner and the Perseverance mines, and skidded down over the sidehill.

Q. They would skid it down over the sidehill on the opposite side of Gold Creek from the plaintiff's flume?      A. Yes.

Q. Then, Mr. Wettrick, I will have you state to

(Testimony of F. J. Wettrick.)

the Court how is the flume of the plaintiff company built with respect to the opposite side of the bank of the creek from which the lumber was taken over—that is, was it built up the hill, or does it follow very much the contour of the bank of the creek?

A. It follows the contour line there of the bank of the creek, with the difference, of course, that the grade that has been given to the flume makes it follow over a perfect contour.

Q. Now, then, it taking the lumber there across the creek immediately opposite the flume, would there have been any necessity of going around the flume to deliver any lumber to be used in the building of the flume?

A. No, I cannot see any necessity of taking the lumber up on the other side of the flume.

Q. Now, I will ask you, Mr. Wettrick, if you observed the work of the plaintiff as they were progressing with their flume [582—432] during the year of 1910? A. Yes.

Q. How did they get the lumber there—that is, did they build one part and then continue right on, or did they build a piece and then go some place else and work?

A. The flume was built by laying mudsills and completing a portion of it, and then wheel the lumber over that portion and continuing on over the vacant grade.

Q. Well, what I want you to state to the Court, the lumber would be taken right up the bank of Gold Creek to be used at that site in the construction of

(Testimony of F. J. Wettrick.)

the flume, or whether it would be shifted down the flume line that had already been constructed?

(Not answered because of objection.)

Q. Well, just describe in your own way, Mr. Wettrick, what you saw them doing in the way of constructing this flume.

A. The flume was built over one section from the headgate down toward the penstock, where the water was finally used, and it was completed as the workmen went along; there may have been another section they worked upon further down the creek, but I know that that particular work was continued right on down from the headgate, because I had some men doing assessment work on the Parish claim right above that and know that when they came up they completed the construction.

Q. I will ask you, Mr. Wettrick, if you have placed upon this Defendant's Exhibit "S" a little road that leads off of the main Basin road down towards the air-compressor of the Ebner Company?

A. Yes, I have.

Q. I wish you would indicate that to the Court as one of the [583—433] witnesses testified concerning this yesterday.

A. To the present air-compressor, you mean?

Q. No, I mean the road that leads off from the Basin road down to the old compressor of the Ebner Company up at the upper works.

A. Starting near the corner No. 1 of the Forrest Lode Claim, it branches off and goes down to the

(Testimony of F. J. Wettrick.)

lumber chute which leads down to the Ebner compressor-house.

Q. Did you ever see any fence up there?

A. Yes, sir.

Q. Do you remember about what time it was?

A. That was—

Q. Do you remember whether it was prior to October 3d or not, Mr. Wettrick?

A. No, I don't know.

Q. Point out on this map, Defendant's Exhibit

Q. You did see a fence up there?

A. Yes, sir.

Q. Did you see any paper or notice posted there?

A. Yes, there was a notice of trespass posted upon it.

Q. Do you remember of seeing the Mulligan water location notice?     A. I do.

Q. Point out on this map, Defendant's Exhibit "S," about what point that notice was posted.

A. The Mulligan notice was posted at a point marked "X," after which is written "Mulligan Notice."

Q. Did you ever see any work that the plaintiff company was conducting in and about where this notice is on the Lotta claim?

A. Yes, I saw what I would call water-troughs laid in the creek some distance down below the Mulligan notice.

Q. How far below the Mulligan notice?

A. Sixty or seventy feet, I think; maybe a little more, laid down the creek.



(Testimony of F. J. Wettrick.)

Q. Do you remember about what time you saw that there, Mr. [584—434] Wettrick?

A. Yes, sir.

Q. I wish you would give the date—was that sometime prior to October 3d, Mr. Wettrick? I don't care for you to look up the date—it was before October 3d, was it?

A. Yes, I think it was.

Judge WINN.—That is all.

The COURT.—I want to know whether those water-troughs—if you know whether those water-troughs were there prior to August 1st?

A. No, sir; I don't know that.

The COURT.—When did you see that trespass notice on this fence?

A. The exact date I cannot give you unless I can get it from some other work that I did there.

The COURT.—Was it before or after August 1st?

A. It was after August 1st.

The COURT.—You don't remember seeing it before August 1st?

A. No, because my work commenced up there August 3d, although I was on the Ebner ground before I commenced the work for this particular line of development up there.

(Whereupon court adjourned until 1:30 o'clock P. M.)

AFTERNOON SESSION.

July 28, 1914, 1:30 P. M.

F. J. WETTRICK, on the witness-stand.

Direct Examination. (Cont'd.)

(By Judge WINN.)

Q. Mr. Wettrick, what, if anything, in 1908 did you do to ascertain whether or not you were brushing out along the lower side line of the Lotta claim or brushing out some other point—did you make any calculations to find any monuments? Just explain that to the Court, how that was done.  
[585—435]

A. Well, the reflection angles of the Lotta claim are right angles; the end stakes of the Lotta lode were in position; from that I turned the right angles across the creek to the Basin road and checked up with the witness corner that is on the Lotta side line where the Forrest end line crosses.

Q. Well, did you hear Mr. Tripp say anything about a flag that was put up there?

A. There was a flag with a little white cloth on the brink of the canyon there.

Q. What was that put up for?

A. It was put up—it was on the old planking, and I expect it was put up there to indicate the course of the side line of the Lotta.

Q. It was up there when you went up in 1908?

A. Yes, we found a log there, which was leaning a little; those things don't stay continuously, it was, I think, about three-quarters or say an inch in diameter.

(Testimony of F. J. Wettrick.)

Q. I will ask you, Mr. Wettrick, if you have taken pains to find out and ascertain as to whether or not the Ebner dam can be seen from any part of the Basin road that runs up to the Perserverance and up to the Ebner property?

A. Yes; I have; I have observed the dam myself from almost every portion of the road except a little depression on the Webster mill site where you cannot see it because it is behind a little hump.

Q. Do you remember the condition of the little road that leads off from the Basin road down the creek coming out at a point about where the Ebner dam is?

A. Yes, I remember that road.

Q. Do you remember what condition it was in in 1910?

A. Well, the road was easy enough found, although there was a little brush grown over it—a little grass and small alders, [586—436] but it was still visible as an old road.

Q. Did you look up any matters to ascertain the date you saw this trespass notice that was posted on the fence just above the old air-compressor?

A. I couldn't get it definitely; I didn't have quite enough time to go over all the books.

Q. Do you remember if you saw it there prior to October 3d, 1910.

A. No, I would have to know what particular work I did there in order to see what date that was.

Q. Did you see it before Mackay was arrested, or could you fix that date?

A. I know the date that he was arrested.

(Testimony of F. J. Wettrick.)

Q. He was arrested on the 3d of October—that is conceded; I was just trying to fix that to see if you could find the date that you saw the trespass notice—if you can find it before we get through with the testimony I would like to have it done.

A. I am not sure about it, Judge.

Q. Did you state this morning that you are a United States Mineral Deputy Surveyor?

A. Yes.

Q. Now, this Defendant's Exhibit "T" which you testified concerning this morning, which is a certified copy from the Surveyor-General's office, I will ask you if that is a paper that has anything to do with the patent proceedings in the Surveyor-General's office?

(Not answered because of objection.) [587—437]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Wettrick, directing your attention now to this map introduced in evidence as Defendant's Exhibit "S," you made that map did you?

A. Yes, sir.

Q. A portion of that map is made from notes that are the result of actual surveys made on the ground by yourself, I understand you to say?

A. Yes, sir; a portion from my notes and some from the notes of the Surveyor-General's office—patent notes.

Q. The balance of the map is made up out of notes that you found in the Surveyor-General's office in



(Testimony of F. J. Wettrick.)

the patent of the various claims?      A. Yes, sir.

Q. And some of the notes are from surveys made by others?      A. Yes, sir.

Q. That is what constitutes the exhibit—that is right, isn't it?      A. That is right.

Q. Now, the Lotta claim as it appears upon this map marked the Lotta Lode, wasn't the results of the notes in the Surveyor-General's office but from a survey made by yourself upon the ground?

A. Yes, sir.

Q. That is the exterior boundaries?      A. Yes.

Q. These represent the exterior boundaries that you found marked by stakes upon the ground as you have testified?

A. Represents the exterior boundaries marked by stakes as I found upon the ground.

Q. Now, the creek as it runs through the Lotta claim—that is [588—438] the result of Mr. Stewart's survey, is it not?      A. No, I don't think so.

Q. Did you survey that creek yourself, Mr. Wettrick?

A. Yes, I ran a traverse up and down that creek.

Q. You put that in yourself from actual measurements upon the ground?      A. Yes.

Q. It isn't as it is shown upon the patent plat?

A. No, it isn't.

Q. What I wish you would do now, Mr. Wettrick, is take your pencil and sketch in here the creek as it is shown upon the patent plat which has been offered in evidence and marked Defendant's Exhibit "T"—will you sketch that in on the map?

(Testimony of F. J. Wettrick.)

A. Yes, sir.

The COURT.—Are the maps on the same scale?

The WITNESS.—No, they are not, Judge.

Q. Have you sketched that off here, Mr. Wettrick?

A. I have, yes.

Q. Now, will you mark that point that you have sketched on the map as the creek with the letters A and B, placing—the place where the creek enters the Lotta and the place where it leaves it?

(Witness does so.)

Q. Now, Mr. Wettrick, I direct your attention to a little plat that forms a part of the patent notes and part of the patent as recorded in the recorder's office and as marked in evidence in the case; the exhibit I am directing your attention to now is marked Defendant's Exhibit "U"; the creek shown as a little different from that shown on the official plat, Mr. Wettrick, is it not?

A. Yes, it is a different drawing, too; a different party made this plat. [589—439]

Q. Now, I will ask you, Mr. Wettrick, to sketch upon exhibit "U," the place where the creek crosses the Lotta, where it commences and where it leaves it, as is shown upon the little plat attached to the patent—the point where it enters with the letter C and the point where it leaves with the letter D—you have it on? A. Yes.

Q. And marked with it with the letters C and D—C where it enters and D where it leaves. Now, exhibit "S" shows the point where the Mulligan notice was posted, does it not? Now, Mr. Wettrick,

(Testimony of F. J. Wettrick.)

please take your rule and mark the point that would be an equal distance from the mill building or their compressor building or whatever it is that is shown on the map to where if the creek was running as it is platted in the official plat, mark down the creek the same distance as it actually exists on the ground.

(Objected to and objection sustained.)

Q. Now, Mr. Wettrick, you saw the brushed out line of the Lotta, you say, in 1910; that is right, isn't it? A. That is right.

Q. The brushed out line that you made there in 1906—is that right? A. That is right.

Q. There are very heavy alders along that line there, almost trees, aren't they?

A. Yes, pretty heavy alders.

Q. Very thick? A. Yes.

Q. Now, the point from which you saw that line was up on the Basin road, wasn't it? A. In 1910?

Q. Yes. [590—440]

A. That is one of the points, yes.

Q. When you are up on the Basin road you are above the line and you look right down on the top of it?

A. You are a little above the elevation of the line, yes; a little above the elevation; the line, however, runs up to the elevation gradually.

Q. I know, but you look down against the hillside, don't you? A. Yes.

Q. And any line that shows at all shows from the Basin road, is that not so?

(Testimony of F. J. Wettrick.)

A. Yes, one can most easily see them from the Basin road.

Q. When you got down in the brush and walked through the brush, a line that would be plainly visible from the Basin road, you would not observe at all; isn't that a fact?

A. You wouldn't observe it so readily unless you went to it.

Q. If you knew it was there and went to it, you might find it, but unless the line was plainly visible from the Basin road you would not be able to observe it in the brush, would you?

A. That is so, you cannot see the line from there.

Q. Now, in August or September of 1910, you brushed out that line again, didn't you?

A. Some time in 1910.

Q. In August or September, the early part of September? A. Probably in September or October.

Q. You brushed out that line again just as it had been brushed out before, cutting the brush all down; that is right, isn't it?

A. Yes, I used the line again.

Q. Well, you brushed it out again, didn't you, Mr. Wettrick?

A. Yes, certainly whatever little brush there was, I brushed out.

Q. There was a good deal of stuff to brush out, wasn't there? A. Small stuff. [591—441]

Q. And you put up a flag at that time at one corner, corner No. 5? A. Yes.

Q. These photographs that have been offered in



(Testimony of F. J. Wettrick.)

evidence, do they show corner No. 5 as the original, or is that the new stake that has been put up against the old stake?

A. That is made of 6 by 6 surfaced lumber.

Q. That is the stake that is set up against the original stake?     A. Yes.

Q. That was placed by you in 1910?

A. No, that stake was there in 1908; that stake has been there for some time.

Q. That was not the original stake?

A. No, I don't believe that 6 by 6 was the original stake.

Q. That little 6 by 6 had no *mark it*, did it?

A. Yes, that was marked in scribe.

Q. I thought the little one was marked?

A. The little one was marked with some sort of a paint, a black paint and the other one was scribed.

Q. What corner is that, the other side line corner of the Lotta?     A. That is number 6.

Q. Now, at No. 6 there was no stake right at the corner.

A. Do you mean the corner wasn't in the right position?

Q. In 1910 there was no stake at the corner there?

A. Yes, there was a 6 by 6 stake.

Q. No stake marked for the Lotta.

A. The same kind of a stake as at the other end, 6 by 6, painted white.

Q. The stake at this point was not marked for the Lotta, however, marked for the Forrest, was it not?

A. I omitted looking up the legends of those

(Testimony of F. J. Wettrick.)

stakes, but I am inclined to think it was. However, I will look—I have my notes, I think. [592—442]

The COURT.—I understood you to testify that that corner No. 6 wasn't marked but that you had put a witness stake there?

A. You misunderstood me; there was a witness stake, a witness corner for the Forrest on the side line where the Forrest end line intersects the Lotta side line; the witness stake there is the witness corner of the Forrest claim on the side line of the Lotta where the intersection is; corner No. 6 of the Lotta, however, is in place there up over the flume; the other one is down by the road.

Q. Now, the stake that you say serves as a witness stake for the Lotta corner is at the point where corner No. 6 of the Lotta should be; is that right?

A. No, that is not right.

Q. Are there two stakes there? A. Yes, sir.

Q. One is the witness stake for the Forrest?

A. Yes.

Q. That has nothing to do with the Lotta?

A. Except it is on the side line of the Lotta and was marked with the Lotta survey number on it.

Q. Was it marked with the Lotta survey number?

A. Yes, it had S. 87 scribed on it.

Q. Is that still there?

A. No, it isn't there; when they widened the road in 1911 and '12 they knocked it out, and there is a rock there now in place of the stake.

Q. That wasn't at the corner of the Lotta, was it?

A. No, not at the Lotta corner.

(Testimony of F. J. Wettrick.)

Q. It was marked S. 87 and was a witness corner?

A. Yes.

Q. And the stake that was at the corner of the Lotta, you don't know whether that was marked or not?     A. I don't now. [593—443]

Q. Did you go up there to see if you could see that brushed out line, from stakes 5 and 6 when you were down in the canyon of the creek?

A. Down in the canyon?

Q. Yes.     A. About the level of the water?

Q. Yes; when you were going down the canyon through the brush could you see that brushed out line?

A. You could see where it commenced over the brow of the canyon.

Q. You would have to get up higher when you looked down, wouldn't you?

A. In order to follow and see the trend of the line you would have to get up a little higher.

Q. Now, Mr. Wettrick, you have been testifying to the various things that those corners were tied to, and so on, from these maps; you are familiar with the Colorado claim, aren't you?     A. Yes, sir.

Q. The Lotta claim was surveyed for patent by Mr. Garside, wasn't it?

A. Yes, so the field-notes say.

Q. So was the Colorado, wasn't it?

A. The Colorado, I believe, was surveyed by Mr. Hill.

Q. Hill and Garside were partners, weren't they?

A. Yes.

(Testimony of F. J. Wettrick.)

Q. And the Idaho placer was also surveyed by the same firm? A. I believe it was.

Q. The Colorado claim and the Idaho placer are property of the Alaska-Juneau, aren't they—you know that. A. Yes, sir.

Q. You know where corner No. 5 of the Idaho is? [594—444] A. Yes.

Q. (By the COURT.) Where is the Idaho?

A. The Idaho is not shown on this map; it is the area in white here (indicating).

Q. Do you know where it is, Mr. Wettrick, corner No. 5 of the Idaho? A. Yes.

Q. You are familiar with the field-notes of the Colorado claim, aren't you? A. Rather familiar.

Q. Now, if you start from one of the lower corners of the Colorado or Idaho placer, for instance, there and measure from those up the creek, giving the Colorado the length called for in the patent, the Lotta would be thrown up the creek for two or three hundred feet, wouldn't it—the Colorado and Lotta field-notes are tied in together, aren't they?

A. That is to say the Colorado end line is identical with the lower side of the Royal.

Q. The upper end line of the Colorado extended would form the side line of the Lotta, is that right?

(Not answered because of objection.)

Q. Now, Mr. Wettrick, if you were looking for the lower side line of the Lotta with a view to determining it upon the ground and had before you the field-notes of the Colorado lode claim and the Idaho placer, knowing that these claims were all surveyed



(Testimony of F. J. Wettrick.)

by the same firm of surveyors that surveyed the Lotta and that these field-notes were all tied in together, wouldn't you be able to locate the Lotta side line by following those field-notes at a point high enough up the creek so the Mulligan notice would not be on the Lotta claim?

(Not answered because of objection.)

Q. Now, Mr. Wettrick, you have already testified, I think,—I will have to make sure of this—that this Lotta as platted by [595—445] you is the Lotta as it actually exists in the patent notes; is that right?

A. As it actually exists in the patent notes.

Q. And that tallies with the patent notes, at least to some extent?

A. You have just pointed out that the creek ties don't tally with the patent notes.

Q. There are some ties that tally, however, Mr. Wettrick?

A. I said the map represents the exterior boundary lines of the Lotta as it is found by getting the corner posts on the ground.

Q. You don't contend that the corner posts upon the ground in anywise checks up with the description given in the patent, do you, Mr. Wettrick?

A. Not with extreme accuracy, no.

Q. Well, do they with inextreme accuracy?

A. There is a slight error.

Q. Is there even a slight similarity?

A. Yes, there is.

Q. Suppose we find corner No. 5 of the Lotta upon

(Testimony of F. J. Wettrick.)

the ground, what is the error in degrees, or the difference in degrees, between the courses given in the patent and the courses found upon the ground between your stakes?

A. Two degrees, nine minutes.

Q. Now, in what direction is it off?

A. The patent course given is North 33 degrees, 45 minutes west, and the true course is 31 degrees, 36 minutes northwest, so that the patent course would show it a little further down the creek starting from corner No. 5.

Q. Now, suppose we started out at corner No. 6 and surveyed the Lotta claim, assuming now that that is the corner in the ground, and ran the course out according to the course given in the patent, where would that land us when we got to the other side line of the Lotta?

A. That would land a little above the corner stake as it exists [596—446] upon the ground.

Q. How much? A. About 50 feet.

Q. Running from corner No. 5 to the upper corner, we would have the same error, would we not?

A. That is, if you ran out—

Q. According to the courses given in the patent notes?

A. If you then ran out the end line also, of course, it would be that much corner No. 3.

Q. So, that if we take the patent with the field-notes, and start at corner No. 6 and run the claim out, we have the claim in one place; and if we take the same patent and the same field-notes and start a

(Testimony of F. J. Wettrick.)

corner number 5 and run the claim out, we have the claim at another place haven't we?      A. Yes.

Q. And starting out with corner No. 3 and running out the claim according to the course given in the patent, we would still have the claim in another place?

A. No, the same place as if you started from No. 5, practically.

Q. It wouldn't be in the same place because the course between 4 and 5 isn't correct, is it?

A. Within a few feet; the course is not far off.

Q. Only a few degrees?

A. Yes, but the distance is so small the deflection wouldn't be very great.

Q. Starting in at the other corner, we would have the claim in another place, wouldn't we?

A. Yes.

Q. The same is true of any other place we might start upon the claim—that is true isn't it?

A. That is true.

Q. Now, let me direct your attention to this little plat that was made a part of the patent by the department; I want you [597—447] to look at that plat, Mr. Wettrick, and let me just ask you the question—this patent describes it as follows: "Beginning for the description of Lot No. 87, at a post marked No. 1, U. S. Survey No. 87; thence, first course, N.  $56^{\circ}$  15' E. 150 feet to a post marked No 2, U. S. Survey No. 87; thence, second course, S.  $33^{\circ}$  45' E. 1500 feet to a post marked No. 3, U. S. Survey No. 87; thence, third course, S.  $56^{\circ}$  15' W. 150 feet to a post marked

(Testimony of F. J. Wettrick.)

No. 4, U. S. Survey No. 87, 300 feet to a post marked No. 5, U. S. Survey No. 87; thence, fourth course, N.  $33^{\circ} 45'$  W. 1500 feet to a post marked No. 6, U. S. Survey No. 87; thence, fifth course, No.  $56^{\circ} 15'$  E. 150 feet to post No. 1, the place of beginning said lot No. 87, extending 1500 feet in length along said Lotta vein or lode and containing 10.33 acres"—then it goes on "Beginning for the description of lot No. 88"—That is the only description given in the written description of No. 87 or the Lotta lode claim, is it not, Mr. Wettrick?

A. What is that again?

Q. That is the only part of the description that relates to No. 87, is it not?

A. Yes, that is the description of the Lotta in that group?

Q. No. 87 contains a description of the whole group? A. Yes.

Q. To this is attached a little plat that appears in evidence and in that little plat the distance from corner No. 6 to Gold Creek is given as 300 feet?

A. The description runs the other way.

Q. The distance from the creek to Corner No. 5 is given as 1200 feet—that is right, isn't it, Mr. Wettrick?

A. That plat shows 1200 feet from Corner No. 5 to the creek.

Q. From the point where corner No. 5 of the Lotta is upon the ground to the point where the creek leaves the ground—now, on the plat that you have here, where would corner No. 5 of the Lotta [598—



(Testimony of F. J. Wettrick.)

448] be if you took it 1200 feet from the creek?

The COURT.—Where would it be on the plat, you mean, or on the ground?

Mr. HELLENTHAL.—I will ask the question again.

Q. Now, Mr. Wettrick, where would corner No. 5 show upon this plat if you platted it so that it would be 1200 feet from the point where the southerly side line intersects the creek?

The COURT.—You are talking now about the exhibit “S”?

Mr. HELLENTHAL.—Yes.

A. I understand you now that you want me to place corner No. 5 on exhibit “S” 1200 feet away from where—

Q. The side line intersects the creek—mark that place with the letter Q, please. Now, the claim is given as 1500 feet long isn't it? A. Yes.

Q. Now, give the claim the length of 1500 feet and mark the place on the opposite side of the creek where corner No. 6 would be, mark that with the letter R, please. Now, if you lay out the balance of the claim from those two corners, the Mulligan would not be on the Lotta would it?

The COURT.—Do you mean, Mr. Hellenthal, that the Mulligan notice as it appears on that plat would not be on the Lotta claim, or the Mulligan notice as it actually appears on the ground would not be on the Lotta claim?

Mr. HELLENTHAL.—As it appears on the plat.

Q. That is so, isn't it, Mr. Wettrick; the Mulligan

(Testimony of F. J. Wettrick.)

notice as it appears on this plat would not be on the Lotta claim? A. No, it would not.

Q. Mr. Wettrick, can you plat on here the Lotta claim, preserving the two ties to the creek in this little plat that is attached to the patent—it is also tied to the creek at the upper end, isn't it? [599—449]

(Not answered because of objection.)

Q. Now, Mr. Wettrick, the creek as it is shown upon your plat, exhibit "S," that is, where it enters the northerly side line, is not the place where the creek enters the northerly side line of the Lotta claim as shown on the plat attached to the patent, is it?

A. It isn't quite in the same position.

Q. The difference given from that upper corner, from corner No 2, to the creek in this little plat is 50 feet, isn't it?

A. That is the distance given, but the plat shows it to be nothing.

Q. The distance shown in the plat attached to the patent is 50 feet, isn't it? A. Yes.

Q. On your exhibit "S" here it crosses right over the corner stake doesn't it? A. Yes.

Q. That is a difference of 50 feet then?

A. The creek there goes over the exact position, the corner No. 2 of the Lotta claim—the corner falls in the water just at the back of the creek at present.

Q. That is 50 feet distant from where it shows on this exhibit of yours. Now, the distance given in the patent notes between corner No. 2 and corner No. 6 is how much? A. 300 feet.

Q. How much is the distance on the ground as

(Testimony of F. J. Wettrick.)

shown by those stakes as you have platted them?

A. Corner No. 2 is no longer in position.

Q. What is the distance as given in that end line as platted by you on the map?

A. It is just a little over 285 feet.

Q. That is about 15 feet short?

A. Approximately 15 feet short. [600—450]

Q. And the courses between the two corners is off a little over two degrees? A. Yes, sir.

Q. Now, commencing at corner No. 6 and going to corner No. 5, the distance given in the patent notes is 1500 feet, isn't it? A. Yes, sir.

Q. What is the distance upon the ground between those two corners as you have given them?

A. Approximately 1526 feet.

Q. Twenty-six feet longer, is that right?

A. Yes, sir; just about.

Q. The distance between corner No. 6 and the creek as shown on the plat attached to the patent is 300, isn't it?

(Not answered because of objections.)

Q. What is it you have testified to, Mr. Wettrick, with reference to these stakes on the ground—what do they represent, anything at all?

A. They represent corner posts of the Lotta lode claim.

Q. And you have nothing in the world to assure you that they are the corner posts except such markings as maybe on them?

A. And the positions in which they fall with reference to other posts.

(Testimony of F. J. Wettrick.)

Q. They don't however, fall in any positions that are called for by the field-notes in the patent of that claim, do they?

A. They fall with approximate accuracy in the positions as you get them from the patent ties—to some of them.

Q. To some of them?      A. Yes.

Q. As to others they are not even approximately accurate—that is right, isn't it?

A. Yes, sir; that is right.

Q. You can take the notes in the patent and you think there are [601—451] some to which they might tie with what you consider approximate accuracy?      A. Yes, I think so.

Q. And others to which they do not tie with what you consider even approximate accuracy; that is right, isn't it?      A. Yes, sir.

Q. There is not a single tie in the description given in any field-notes in the patent, in the Surveyor General's office, or anywhere, that you are familiar with, in which any one of these corners tie with accuracy; that is right, isn't it?

A. If you mean within a foot or two, I say no.

Q. Let's say within 20 feet?

A. Well, I think I can take some of the ties given in the patent notes and re-establish the Lotta lode claim within less than 20 feet.

Q. Which tie given in the patent notes now would establish the claim within 20 feet of any one point on the ground?

A. Well, for instance, if I take the tie to corner



(Testimony of F. J. Wettrick.)

No. 2 of the Keystone, or No. 2 of the Crown Point and rerun the end lines of those claims and continue that end line the distance as called for in the patent notes of the Taku and Lotta, I think I would establish the end line of the Lotta claim approximately in the position it is found there.

Q. You would, however, have to disregard the courses given in the field-notes of the patent, wouldn't you?

A. Yes, I wouldn't pay any attention to the courses.

Q. You would simply do as you did in the first place, find the posts upon the ground, mark them and measure from one point to the other.

A. I didn't mark it.

Q. You would place the post upon the ground and measure from one point to another?

A. Continue the line as established by the posts found upon the [602—452] ground which the patent notes say is the same line as the end line of the Lotta and the Taku; these have all got straight lines for their end lines.

Q. However, you didn't see those posts placed in the ground at the time those claims were patented?

A. No, sir; I wasn't in the country.

Q. You don't know from your own knowledge whether those are the original posts placed in the ground or not?

A. Not from my actual knowledge, no.

Q. Now, there is a road leading down around from the Basin road; I think you will testify to that, and

(Testimony of F. J. Wettrick.)

there was a fence built across that road?

A. Yes, sir.

Q. Where does that road show?

A. That road shows leaving the main Basin road a short distance beyond the southeast corner post of the Parish lode.

Q. On the Parish No. 2 claim?

A. Parish No. 2 claim.

Q. That start on the Parish and runs down the creek, or up the creek, until it gets down to the bottom of the canyon?

A. It runs almost directly for the creek, yes.

Q. It starts about 300 feet below the southerly side line of the Lotta, doesn't it—250 feet, or something like that?

A. Yes, something like that.

Q. And on the Parish No. 2 claim as you have it platted?

A. That is right, running across the Parish No. 2.

Q. And the fence that you saw built was built just where the road leaves the Basin road on the Parish No. 2 claim?

A. A little beyond that, a distance of about 50 feet, I should say.

Q. Fifty feet down the creek?

A. Something like that. [603—453]

Q. Was the fence on the Parish No. 2 claim, would you say?

A. I rather think so.

Q. And on that fence was a trespass notice warning everybody to keep off?

A. Yes.

Q. And you saw that there some time in August or September of the year 1910?

(Testimony of F. J. Wettrick.)

A. I think some time during September, yes.

Q. What year, 1910? That was placed there—you know, as a matter of fact, from your connection with the company, to keep the Alaska-Juneau Company from using that road to get down to the dam with their lumber?

A. I had nothing to do with that; I had nothing to do with placing the trespass notice there.

Q. You know that was what it was put there for, don't you?

A. No, I don't know from my actual knowledge.

Q. You would surmise it was for that purpose, wouldn't you?     A. I might.

Q. You have testified in your direct examination, if I remember correctly, that you knew all about Judge Cushman's decision with reference to the Lotta and Parish No. 2?

A. No, I think you must have misunderstood me.

Q. What did you say in regard to Judge Cushman's decision with reference to the Lotta and Parish No. 2 claims?     A. I said I remember the decision.

Q. You remember that one part of that decision was that the Parish No. 2 lode claim was an invalid location, do you not?

A. I know that was substantially it, yes.

Q. Now, with reference to the dam on the boundary of the Lotta. Now, Mr. Wettrick, that dam didn't cross the creek at right angles, did it?

A. No, sir.

Q. It sort of slanted up the creek? [604—454]

A. Yes, sir.

(Testimony of F. J. Wettrick.)

Q. So that the intake was considerably lower down than the upper end of the dam; that is right, isn't it?

A. Yes; with reference to a line perpendicular up the creek it would be further down on the east side.

Q. Now, the dam was constructed, it was made out of poles held in place with lag bolts?

A. No, timbers across timbers.

Q. The upper end of those long timbers were anchored to some stuff that was on the Lotta claim?

A. That is to say they were resting on the Lotta claim, yes.

Q. And that held the dam in place. The dam itself from where the water hit it to the point where it struck the creek was below the side line of the Lotta claim as brushed out by you and marked by you upon the claim? I am not talking now if you take that log as part of the dam—I mean that part of the dam from where it enters the creek, that was all below the side line of the Lotta, was it not?

A. I think you mean the intake.

Q. Well, the intake was below the side line of the Lotta?

A. The intake was below the side line, but about three-fifths, or so of the dam was over on the Lotta side.

Q. But the dam, Mr. Wettrick,—that part of the dam wasn't holding back the water, it was merely an extension beyond the creek, wasn't it; you know what I mean, don't you?

A. I think I get your idea. No, I think I would say that is not the case; the dam was not very much



(Testimony of F. J. Wettrick.)

higher than the water level and therefore nearly all of the dam was used for impounding the water.

Q. You don't mean to testify to any part of the dam except that part that was put in to keep the dam in place, went on the Lotta claim—except that long stick of lumber, that is a fact, isn't it? [605—455]

A. No, I wouldn't put it that way; I think my notes show that about three-fifths of the dam proper was on the Lotta claim.

Q. The dam proper is in identically the same position it always has been, isn't it; has it been changed since Judge Cushman's decision? A. Yes, a little.

Q. Hasn't been moved one way or the other, has it?

A. It has been changed a little, yes; it is not in the same position to-day it was then.

Q. The intake is the same place?

A. The intake is the same place.

Q. The water goes into the flume at the same place?

A. Yes.

Q. And the dam that holds the water back is in the same place except that part way across it makes a break and instead of going to the Lotta it continues below the side line of the Lotta?

A. The timbers, the easterly end of the timbers are now swung below the lower side line of the Lotta, that is right.

Q. What is there on the Lotta now?

A. The easterly end of the large timber.

Q. How much is there on the Lotta, how far does that dam stick over the Lotta now, any part of the dam.

(Testimony of F. J. Wettrick.)

A. There is approximately three and one-half feet of the ends of your longest timbers that cross the side line of the Lotta, onto the Lotta.

Q. How far on to the Lotta?

A. About, I should judge, two feet.

Q. When did you measure that up, Mr. Wettrick?

A. This morning.

Q. Who was with you?

A. Mr. Wilhelm and an assistant I have in the office.

Q. But the intake is still off the Lotta? [606—456]

A. Yes, sir.

Q. And always was off the Lotta?

A. I think always was off the Lotta.

Q. Now, you met George Bent here in Juneau in August, 1910?

A. Yes, I met him first in the latter part of July.

Q. On the 3d day of August you and George Bent and other people went up there on the ground; that is right, isn't it? A. Yes.

Q. That is the first time you went up there with that outfit? A. It is.

Q. Who was with you up there?

A. Mr. Bent, Mr. Mackay, Mr. Hill, Mr. O'Boyle, and the others—I don't now remember all of them.

Q. What did you do there on the 3d day of August? That is 1910, isn't it?

A. 1910. We procured some data as to levels of the old flume there, projected that line of levels across the gulch to the northwesterly side of Gold Creek along that hillside.

(Testimony of F. J. Wettrick.)

Q. That is to say, you went above the old Ebner flume on the southerly side of the creek—the flume that had been previously there—and projected some levels across to see where that would strike the bank on the opposite side, is that right?

A. That is right.

Q. You didn't go upon the bank on the opposite side, but you looked to see where this elevation would strike on the opposite side?

A. We went on the opposite side, but we didn't place any stakes or anything like that.

Q. You took a level across from the flume to see where that would strike the opposite side?

A. That is right, and then studied the country as we walked along the road. [607—457]

Q. A geological study?

A. The character of the ground and the surface.

Q. The character of the ground and the surface?

A. Of the country we went through; how difficult it would be for running their flume construction, and so forth; in fact, to get an idea about a grade line and things like that.

Q. Some of the party when down on the Lotta claim and examined that place down there?

A. Yes, I wasn't along with them on that.

Q. Some of the party went down there and examined—went to where Harri built the Alaska-Juneau bunk-house, didn't they?

A. I don't know; I was more or less busy working up above there and I didn't walk around with them; I wanted to get the data so I went up there again.

(Testimony of F. J. Wettrick.)

Q. You don't know whether they went there or not?     A. I don't know how far they went.

Q. They went in that direction, you know that?

A. Yes, sir.

Q. You know they went in that direction, but you don't know how far they went?     A. No.

Q. They didn't go to the mill site near Shady Bend that day?

A. I don't believe—they might have gone down there; my impression now is they walked over it and I was up, went up to the place where we afterwards located, but as to that I am not sure.

Q. The second day you did some more—that is, the 4th of August which was the day after the 3d, or which I call the second day—you did some more of the same kind of work?

A. On the 4th of August, yes, we did some more of the same character of work. [608—458]

Q. Projected some more elevations and things of that kind?

A. Ran a line of levels from the old flume grade of the Ebner, running around the old mill there, down to Shady Bend, in order to get the difference in elevation between those two places.

Q. That is what you did the next day?

A. That is one of the things we did, yes.

Q. Now, on the 5th day you did some more of that kind of work, didn't you?     A. The fifth day, yes.

Q. Now, this data was procured by you for the purpose of determining the best place to build a mill and to build a flume line—a double purpose?



(Testimony of F. J. Wettrick.)

A. That was the purpose, yes.

Q. You were to decide from the data you were gathering where the new mill was to be built—they had already decided to build a new mill? A. Yes.

Q. And you were getting data to determine the best place to build it?

A. Yes; at any rate to see if it was feasible to build it where they had in mind of choosing the place.

Q. To see which was the most feasible place you could build it? A. Yes.

Q. Now, when was it you determined upon building the mill at the point where the excavation has since been made—that was about 6th, wasn't it?

A. I don't know about that exactly, because it wasn't my decision; I procured the data merely, so I couldn't tell you as to that.

Q. You don't know what the definite date than was that that point was definitely selected? [609—459] A. No, I don't.

Q. You submitted the data for the purpose of forming a basis for the decision of the others, who really made the decision?

A. I imagine that is what it was used for, or that is, what they were desirous of having; they may have had their minds made up before that.

Q. But they were gathering data anyhow, and you were furnishing the data? A. Yes, sir.

Q. Now, on the sixth day, that is the day you started to make the preliminary survey for the flume line?

(Testimony of F. J. Wettrick.)

A. That is the day that we started setting actual grade stakes.

Q. On the flume grade of the new flume?

A. Yes, sir.

Q. Have you got your note-book with you?

A. No, I haven't.

Q. Would you mind going and getting it to show just what you did on that day?

A. No, I will get it.

Q. What did you do the next day?

A. My log-book shows that on the sixth day we commenced the survey of the flume line from the intake towards Shady Bend.

Mr. HELLENTHAL.—Now, will you get your note-book?

(Whereupon a recess was taken for ten minutes to enable the witness to get the book.)

Q. Now, Mr. Wettrick, have you got your field-book?

A. No, I didn't locate the field-book; I have some 200 or 250 books, old books, and I haven't a very good system of indexing and I didn't find it because I hurried back.

Q. You couldn't find your note-book?

A. No, not now; I could probably get it by looking over all of them, and I will try to look for it. [610—460]

Q. Now, with reference to the Alaska-Juneau flume, you have testified that you knew where that work was being carried on in October, I believe, or November? A. In October, yes.

(Testimony of F. J. Wettrick.)

Q. Isn't it a fact that they were building that flume at both ends, starting at the dam and also starting at the portal of the water tunnel?

A. I think they had men working down there.

Q. Isn't it a fact that about 10 per cent of the lumber was slid down the hillside below the dam and brought in that way—10 per cent approximately was taken down by the road that Harri brushed out near the Alaska-Juneau bunk-house?

A. No, it would seem to me that considerably more than 10 per cent of the lumber was shot down over the hill there, for the reason I saw a considerable amount of flume being built from the intake down, and the lumber came in that direction for that.

Q. Other working lumber was brought over the trail from the Jualpa Basin, wasn't it?

A. Yes, there was lumber brought that way.

Q. Landed at the Jualpa dam and brought up over the trails that Harri built near the Alaska-Juneau bunk-house?

A. I know there was some lumber brought that way.

Q. Now, the point where the construction work was going on when you were doing the assessment work in November—you are familiar with that?

A. Yes, that was in October, I believe.

Q. About what date?

A. The latter part of October, about the 29th or 30th.

Q. You were doing assessment work on the Parish at that time?      A. Yes.

(Testimony of F. J. Wettrick.)

Q. You were driving a tunnel? A. Yes, sir.  
[611—461]

Q. And the reason you knew just where, how far that tunnel construction had progressed, was because the tunnel that you were driving was right above the flume? A. Some distance above the flume, yes.

Q. And it was so driven that it just happened that the dumping of debris taken from the tunnel, when dumped down the hill happened to strike just exactly where the men were working on the flume; is that right?

A. It rolled down over the hillside into the creek, because the tunnel was driven on a stringer there in the hillside.

Q. And the muck from the tunnel rolled down the hill and happened to strike just where the men were working, you remember that, don't you?

A. Where the men were working as they came down the flume, yes.

Q. Broke up the flume, didn't it?

A. No; I think at one time there, after the Alaska-Juneau continued its flume construction under the dump, that it did break off a board or two of their flume—two, I think; that is, the flume was built under the lump while the work was going on.

Mr. BURTON.—While the work in the Ebner tunnel was going on?

A. The work in the Ebner tunnel had been going on for some time before the flume construction came to that point.

Q. Now, Mr. Wettrick, that photograph here, the



(Testimony of F. J. Wettrick.)

one of the Ebner dam and the tent and those things—this photograph marked Defendant's Exhibit "Z," as well as the photograph marked Defendant's Exhibit "A-1"—they were both taken, I believe, on November 4th, 1910; is that right?

A. On November 4th, yes.

Q. Both taken on that same day?

A. On November 4th, yes; that is right.

Q. What was the day, Mr. Wettrick, that you were first up there—the 4th of November, when you were there first in November or [612—462] October, up there at the dam?

A. On the 4th I made a trip over the works there?

Q. 4th of October? A. 4th of October, yes.

Q. That was the first time you were up there for some little time?

A. The first time in October, I think, yes.

Q. At that time you think there had already been some flume grade constructed between the dam and the Shady Bend mill site? A. Yes.

Q. How much had been constructed, Mr. Wettrick?

A. Well, it is pretty hard for me to say just how much; I could arrive at it somewhat by knowing the number of men on the grade and knowing somewhat the amount of work they would do each day.

Q. Now, the place where Harri's tent was, the flume was built on a trestle upon the neighborhood—between there and the dam the flume was on a trestle?

A. No, between there and the dam most of the way it was laying on mudsills—an excavation from there to the dam.

(Testimony of F. J. Wettrick.)

Q. No excavation in the vicinity of Harri's tent, was there?

A. The excavation reached as far as the back end of his tent, I believe.

Q. That is, leading from down creek up?

A. From up creek down.

Q. The excavation was between Harri's tent and the mill site, or between Harri's tent and the dam?

A. There was excavation all along, but there is a little depression there between the dam and the Basin road where a trestle was built to receive the flume; this is a little handle through which the excavation was made first along the bank of the creek where Harri's tent was later placed and where the flume was finally constructed; the new excavation was made in order to get around [613—463] it.

Q. But now between Harri's tent and the dam the ground is lower than the level of the flume, isn't it?

A. No, a little higher.

Q. All the ground between the tent and the dam?

A. Nearly all the way it is a little higher.

Q. Are you sure there were some excavations there on October 4th when you went up there?

A. Yes, quite.

Q. Now, where was there any excavation?

A. From the dam leading down, and even beyond, I think, the Basin road.

Q. Now, would you be sure of that—that there was on October 4th?      A. Yes, pretty sure of it.

Q. That there was some grading done?      A. Yes.

Q. So that it could be seen?

(Testimony of F. J. Wettrick.)

A. Oh, yes, I think so.

Q. You were there again on the 11th?

A. Yes, sir; on the 11th.

Q. Now, between the time you were there on the 4th and the 11th, I think you said there were two boxes of flume put in, sometime between that time?

A. That is to say, on the 11th I began the excavation around Harri's tent and laid the flume and I connected that up, I think, with two boxes of flume from the head-gate.

Q. There were two boxes from the head-gate?

A. Yes, I believe so.

Q. Now, between the time you were there on the 4th and 11th, had the dam been cut and the water turned in through those boxes or flume?

A. The water was running through there, I am reasonably sure, [614—464] because it had washed out a little of the grade near the end of the second box, and I had the men in continuing that flume to place some rock along the creek there to avoid further washing out, and to repair the grade for the flume which was washed out.

Q. Then the dam must have been cut?

A. I should say it was.

Q. The dam must have been cut between the time you were there on the 4th and the time you were there on the 11th?

A. I would think so, from the way the water was going through.

Q. There was no dam cut on the 4th; no water run-

(Testimony of F. J. Wettrick.)

ning on the 4th, but there was water running on the 11th?

A. About water running on the 4th, I didn't pay very much attention to that.

Q. You knew where the flume commenced, the dam? A. Yes.

Q. And of course that dam couldn't have been cut if the flume wasn't in?

A. No, it might fill up to the level and some water come through—I didn't pay particular attention to that.

Q. To the best of your recollection, the dam was cut between the time you were there on the 4th and the time you were there on the 11th?

A. Yes, sir.

Q. Mr. Wettrick, you were on the ground in August, were you not, of the year 1910?

A. Yes, sir.

Q. And at that time you saw men working in the upper tunnel flume grade, didn't you?

A. Yes, I think I did.

Q. You saw those men there, in the latter part of August, 1910, working on the upper grade?

A. I imagine that I did; I don't know that I did; I would have to [615—465] refresh my memory as to that. If you will wait just a minute I will do so—no, I don't believe I did see them in August.

Q. When did you see them?

A. I saw Harri down in the vicinity of that cabin during August, but the men working on the water



(Testimony of F. J. Wettrick.)

tunnel, I don't think I saw them until September.

Q. What day did you see them first?

A. I don't seem to have any note of that, I haven't found it, as to when I saw them on the water tunnel; I remember meeting Lindsay and Hawley running out what appeared to me, and I think they told me it was, a connection between the Oregon lode claim and the United States Mineral Monument on September 13th.

Q. I will ask you this question—you testified as a witness in the case of the Ebner Mining Company some years ago, did you not—on page 628—didn't you testify at that time as a witness as follows:

“Q. You also know that a tunnel was started prior to that time on the Parish No. 2 lode by the Alaska-Juneau people? A. During the month of August?

Q. Yes. A. Yes, I saw it from the road.” Did you so testify?

A. I very likely did.

Q. That is correct, isn't it, Mr. Wettrick?

A. I dare say it is if I so testified; I don't remember now that I did see them.

Q. Now, look at that record from which I have read and testify whether you did say that you saw them in the month of August working on that upper tunnel—does that refresh your recollection?

A. Yes, it doesn't refresh my recollection, but I dare say that is correct.

Q. You saw them in the month of August working on the upper tunnel? [616—466].

A. That is I have so testified, and my memory was

(Testimony of F. J. Wettrick.)

a little fresher at that time.

Q. That is right, isn't it?      A. Yes, I think it is.

Q. Now, that string of mill sites that extends between the Cape Horn and the Cape Horn No. 2 lode, those are the mill sites located by Mr. Bent in August, I think, of 1910?

A. I don't know as to that.

Q. When were they located?

A. I don't remember the exact date.

Q. What is the name of them?

A. I don't remember the names of them; I think that I could get them.

Q. They were located as placer, were they not?

A. They were once located as placer claim; yes, sir.

Q. Then you put mill sites over the placer location?      A. They were relocated.

Q. The placer locations were made by Bent some time in August, 1910?

A. Yes, those were placer locations.

Q. Made by Bent some time in August, 1910?

A. Yes, sir.

Q. And the mill sites were located on top of those since that time?      A. That is right.

Mr. HELLENTHAL.—That's all.

Redirect Examination.

(By JUDGE WINN.)

Q. Now, Mr. Wettrick, I want to call your attention to this Defendant's Exhibit "S," and also to the official plat that was the foundation for the Lotta patented claim and other claims; Mr. Hellenthal, in

(Testimony of F. J. Wettrick.)

propounding some questions to you, singled out the Lotta claim in that group and asked you a certain number [617—467] of questions about making certain locations of monuments and exterior boundary lines of the Lotta. Now, then, suppose you take that survey as a whole, as it appears on the official map and plat, and have checked the calls that are made to the ties and the natural objects that are given, whether that survey as a whole and as appears in that patent you could, by finding the monuments you found upon the ground and the ties made thereon, locate that particular claim on the ground?

(Not answered because of objection.)

Q. Now, then, Mr. Hellenthal gave you some distances there, Mr. Wettrick, that he called off from the little sketch that is attached to the patent, and set some distance with 1,000 feet or 1,200 feet—I will ask you if that is the distance that is given in the official plat here of the survey, or do those two particular maps disagree in that respect?

A. They disagree in that respect. In fact, the distance as given on the colored sketch, which is the one accompanying the patent notes, gives the distance to the creek from corner No. 5 on the Lotta as 1,200 feet, when, as a matter of fact, it is shown on the plat to be 1,100 feet, so that shows a disagreement between the patent plat and the official plat of the Surveyor General.

Q. Now, when you refer to the patent plat, which do you refer to—is that the official plat that the certificate of the Surveyor General is on, or is it the

(Testimony of F. J. Wettrick.)

other sketch that accompanies the field-notes of the patent?

A. I refer to the colored sketch as the patent plat, by which I mean that it is the sketch accompanying the field-notes of the patent as recorded; the map which has the Surveyor General's certificate on is the map that accompanies the return of the field-notes from the United States Mineral Surveyor.  
[618—468]

Q. Now, I want to get this point straight from you, Mr. Wettrick; Mr. Hellenthal questioned you considerably as to about how much of that dam as first constructed by the Alaska-Juneau people, extended over on the Lotta claim. Now, I will ask you if there was any change made in it, as to whether or not any part of the dam that was on the Lotta claim diverting any of the water from Gold Creek down toward the intake of the Alaska-Juneau—that is, did any part of the dam as it was constructed there before they removed it, and as it was at the time Judge Cushman tried the Basin case,—was there any part of it in the creek and did the water reach it, or any part of it on the Lotta claim?

A. Yes, certainly it was, almost one-half of the dam.

Q. Then, the dam wasn't constructed at right angles with the bank but was constructed commencing on which bank of the creek, or did it slant down?

A. The dam is built at an angle with the course of the creek, the northwesterly end of the dam being the farthest up the creek; and over on the Lotta—



(Testimony of F. J. Wettrick.)

the portion of the dam that was on the Lotta claim was the northwesterly end of the dam—that is, the northwesterly one-half, approximately.

Q. Now, I will ask you, Mr. Wettrick,—this may not be redirect, your Honor; if not, I ask permission to ask it as a direct question. Did you ever notice or see the entire length of the trail which they claim ran up from the Jualpa dam to the Harri cabin—if you were ever over that trail?

A. Yes, I have walked from the Jualpa dam over a trail taken by the Alaska-Juneau men to the Harri cabin.

Q. Now, I will ask you to apply your rule to this exhibit, Defendant's Exhibit "S," and tell just what amount of that trail would be on what is marked on this map and plat as the Cape Horn or the Auk Chief lode there?

Mr. HELLENTHAL.—That is not redirect.

Judge WINN.—I ask the privilege to ask that question on direct examination. [619—469]

A. I should say there was about 200 feet, I think, of that on the Taku Queen lode and a portion of it on the Cape Horn.

Q. When you went down, Mr. Wettrick, to examine your—

The COURT.—In order not to get mixed up, is that the only question you want to ask him in chief?

Judge WINN.—Yes, sir.

The COURT.—Now, you are getting back to your redirect?

Judge WINN.—Yes, sir.

(Testimony of F. J. Wettrick.)

The COURT.—Very well.

Q. Did you look to find your notes to find out how any of these corner posts that were there on the side line or end line, or how the corners are marked, you didn't ascertain that when you went down to your office this time, did you?

A. No, I didn't have time to do that.

Q. Now, another question—under whose direction and by whose orders did you go up there and run the temporary survey of the flume line down to Shady Bend—that is, did you do it of your own accord or did you do it at somebody's direction?

A. I did it at the request of Mr. Bent, and all the work I did that summer was through arrangements made with Mr. Bent.

Q. Now, I will ask you a question, Mr. Wettrick: Are you positive that you saw work going on on that upper tunnel of the Alaska-Juneau Company in the month of August?

A. No, as I stated before, I am not positive about that; I don't recollect.

Q. Did you see Mr. Lindsay up there at the time that he claims he made a survey or ran out some lines, and was up there at this tunnel?

A. I saw Mr. Lindsay—the first time I saw him in that neighborhood was on the 13th of September.

Q. Did you ever measure how far that upper tunnel was run in? [620—470] A. Yes, I did.

Q. What is the distance?

A. It is approximately 18 feet, I believe; I

(Testimony of F. J. Wettrick.)

wouldn't be sure of that, I would rather look that up.

Q. You have made a measurement and can ascertain that?      A. Yes.

Q. I wish you would look that up, Mr. Wettrick.

A. I will look that up.

Q. I will ask you another question, Mr. Wettrick—were you ever in charge of the work up there except at the one time that you testified to, which, I think, was in October or November, in the building of the flume or the actual construction of it?

A. No, not to have charge of the whole operation—at different times I had, but in October during Mr. Mackay's absence, I had charge of the entire works.

Q. In what capacity was Mr. Mackay engaged at all times he was there?      A. Superintendent.

Q. Of the construction work of the flume?

A. Yes, of the construction work.

Q. You and Mr. Hill were doing what—establishing the grade and putting in the grade stakes?

The COURT.—You have already gone into that.

Judge WINN.—Very well, that is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. In your former testimony, Mr. Wettrick, you did testify that you saw men working on that upper grade in the month of August—near the tunnel?

A. Read it again, will you—if I did say so it was true.

(Testimony of F. J. Wettrick.)

Q. If you testified to that then when your recollection was [621—471] better, it would be true?

A. Certainly I testified to the best of my recollection.

Q. You testified as follows, didn't you: "Q. You also know that a tunnel was started prior to that time on the Parish No. 2 lode by the Alaska-Juneau people? A. During the month of August? Q. Yes. A. Yes, I saw that from the road." Did you so testify.

A. I evidently did if that is a correct transcript.

Q. That is true, isn't it?

A. Yes, if that is a correct transcript, that is true.

Q. You haven't any fault to find with the transcript, have you? A. No, sir.

Q. That tunnel, Mr. Wettrick, was only an eight-foot tunnel, that upper one, instead of 18 feet?

A. Eight feet from where it enters under cover?

Q. Yes, eight feet from where it enters under cover.

A. I wouldn't say as to that, I will look it up; I have it in my note-book.

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(Witness excused.) [622—472]

The defendant, further to maintain the issues on its part, introduced as a witness ANGUS MACKAY, who being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:



**Testimony of Angus Mackay, for Defendant.**

Direct Examination.

(By Judge WINN.)

Q. Mr. Mackay, how long have you been in Alaska?

A. Off and on since 1893.

Q. What is your business, Mr. Mackay?

A. Consulting engineer.

Q. You first worked at that in Alaska over at the Treadwell Company, did you?     A. Yes, sir.

Q. You were over there how long?

A. From 1893 to 1901, I think, or '02; I don't remember just when I left there, the exact date.

Q. When did you first go on the Ebner property—I will call it the Ebner Gold Mining Company's property, Mr. Mackay?

A. For which company do you mean?

Q. I mean when did you ever go on the Ebner property—it don't make any difference who employed you.

A. A good many years ago, I was over the property.

Q. Did you have anything to do with this same property, Mr. Mackay, in the year of 1910?

A. I did.

Q. What was your first connection with any work or structures that were to be constructed upon this property, in 1910?

A. When the timber work for the 200-stamp mill came up from Seattle.

Q. What time, about, were you employed to get out the timber for the 200-stamp mill on this property—approximately the date you were employed?

(Testimony of Angus Mackay.)

A. I think some time in July I started in.  
[623—473]

Q. You had your agreement to start in, though, prior to the time you started in—about what time did you have any agreement with interested parties?

A. About the first of June, 1910.

Q. That was in the State of New York, wasn't it?

A. New York City.

Q. Now, when did you come out to the coast at Seattle to get out the timber for the 200-stamp mill?

A. I left New York about June 1st, remained in Chicago for some time; I cannot tell you the exact date when I landed in Seattle, something around the first of July, I think, or the latter part of June.

Q. I will ask you approximately what time you commenced preparing the timbers in Seattle for this 200-stamp mill on the Ebner property?

A. Oh, it was some time in July, I cannot tell you the exact date.

Q. Of the year— A. 1910.

Q. Do you remember the time that Mr. Bent and his party came to Juneau, Alaska, Mr. Mackay, in 1910? A. I do.

Q. What month was that in, do you remember?

A. They came here in July; they were here when I got up here.

Q. Had you commenced work in Seattle on any of these timbers for this 200-stamp mill before Bent and his party came to Juneau? A. I had.

Q. Then you came up to Juneau while they were here, didn't you? A. I did.

(Testimony of Angus Mackay.)

Q. You were acquainted with Mr. Hill and Mr. Wettrick at that time, were you? A. Yes.

Q. Now, Mr. Mackay, when you came up at that time when, to the best of your recollection, were you first on the Ebner property? [624—474]

A. I think it was on August 3d.

Q. With whom did you go up there, Mr. Mackay?

A. With Mr. Bent and Hill and Wettrick, and there was several more, I don't recall now who they were—parties from New York.

Q. What was the purpose of taking these surveyors up on the property at that time?

A. That was to run a preliminary line along to see about how the flume would come; also about where to locate the mill site.

Q. Now, that was to run a preliminary line from what point or points on that property to what other points, Mr. Mackay?

A. From the old Ebner dam to a point directly over Shady Bend.

Q. You were up there, were you, all day on the 3d of August, 1910? A. Pretty much; yes, sir.

Q. Just tell in a general way, Mr. Mackay, what, if anything, you saw Hill and Wettrick doing and what they were doing.

A. Well, they took the levels from the old flume at the 15-stamp mill and run a preliminary line down on the Basin road side of Gold Creek.

Q. Did you come down town then that evening of the 3d? A. I did.

Q. Did you go up on the next day, the 4th?

(Testimony of Angus Mackay.)

A. I think I did; was up pretty much every day while I remained here.

Q. Were Hill and Wettrick up there, as you remember, or one or both of them up there on that day, the 4th?

A. Well, they were up pretty often; I think probably they were up there; I couldn't just exactly state now, it is a long while ago.

Q. Do you remember about how many times you were on that property during that period that you were in Juneau, and then you left to go to Seattle again?

A. I know I was up pretty nearly every day while I was here.

Q. Do you remember approximately what time you left to go to [625—475] Seattle, Mr. Mackay?

A. No; it was a few days after the wreck of the "Princess May"; I know the passengers had to wait for another boat.

Q. A week or ten days, or something like that?

A. About that.

Q. I will ask you when you were up there on the 3d and 4th if you saw any persons working on the opposite side of the creek, down about the Jualpa dam? A. I did not.

Q. At the time you left to go to Seattle, can you tell generally to the Court what had been done on this property by Hill and Wettrick, or anyone else?

A. Well, they had the flume line located and also the mill site.

Q. Before you went down that time, then, it was determined where you were to run the high line



(Testimony of Angus Mackay.)

flume on the Ebner property, and the place where the mill should be built?

A. Yes, sir; also a tunnel.

Q. Had Hill and Wettrick done any surveying on the tunnel up to that time?

A. Except in a general way; the mill site was located there and then the tunnel was to be placed right in that immediate vicinity.

Q. Now, you heard Mr. Tripp's testimony, did you not, Mr. Mackay, when he was on the stand?

A. Yes, sir.

Q. Do you know about where Mr. Tripp commenced a tunnel up on the Cape Horn No. 2 claim prior to the year 1910?      A. I do.

Q. Where is that with respect to the tunnel which Hill and Wettrick located and which was afterwards run?

A. It was, oh, probably 50 or 60 feet east of the tunnel they have driven now.

Q. Now, what time, do you remember, or approximately what time [626—476] did you get back from Seattle when you went down on this trip?

A. I think it was some time in September.

Q. Of 1910?      A. 1910.

Q. Just explain to the Court what, if anything, was going on on the Ebner property then and what changes had been made in any appearances, so far as work which had been conducted on the property in your absence.

A. Well, they had started work where the flume is now built, cut the brush away, and had also done

(Testimony of Angus Mackay.)

some work at the intake—the present intake.

Q. You mean the intake up at the Ebner dam?

A. At the Ebner dam.

Q. The intake of your new flume is the same intake as the old flume that conveyed the water to the old Ebner workings? A. Yes, sir.

Q. There had been some work done there?

A. Yes.

Q. Who was up there on the property when you got back, Mr. Mackay?

The COURT.—Which property?

Judge WINN.—The Ebner property.

A. It was Al. Black, I think, who was engaged before I went down to go to work for them.

Q. Do you remember whether or not the grade of that flume line had been established by Hill and Wettrick before you went to Seattle?

A. The route was practically laid out.

Q. The first work that was commenced on this grade line for the new flume, was it at the Cape Horn end or the end up at the dam?

A. End up at the dam.

Q. Do you remember, Mr. Mackay, about what time there was an excavation made at the dam for putting the flume in? [627—477]

A. I think the first part of the excavation was made in September.

Q. 1910? A. 1910.

Q. Now, when you got back, what position did you take in relation to these improvements that were contemplated to be put there on this property?

(Testimony of Angus Mackay.)

A. Acting superintendent.

Q. Then, how much were you on that ground from the time you got back here up to the latter part of December of the same year?

A. Oh, I was up there pretty much every day except when we had trouble and was called away.

Q. Under whose supervision was the flume constructed? A. It was under my supervision.

Q. Now, then, when you first came back do you remember approximately how many men you put to work?

A. Oh, I had all the way from 15 to 60 men on the flume and mill grade.

Q. On the high-line flume and the mill grade.

A. Yes, sir.

Q. What time did you commence to work on the tunnel that you spoke about, that was taken into consideration by you people before you went to Seattle?

A. December, 1910.

Q. That was the time you commenced work on the tunnel? A. Yes, sir.

Q. In the meantime, from the time you returned from Seattle up to December, what had you been doing? A. What is that again?

Q. I say, in the meantime, from the time you returned from Seattle up to December, the time you commenced driving the tunnel, what had you been doing on the Ebner property?

A. Building the flume and making the excavation for the mill.

Q. I will ask you if you prosecuted this work of

(Testimony of Angus Mackay.)

building the [628—478] flume with diligence or otherwise, after you returned?

A. With diligence.

Q. What is the size of that flume—I don't mean in length, but the dimensions in width and height.

A. It was built 3 feet by 4, but it has been raised up since—makes *is* about 3½x4.

Q. Do you know the approximate length of that flume from where it enters the dam at the intake of the dam, down to where it ends near your mill site?

A. It is a few feet over four thousand.

Q. Something over 4,000 feet. Explain to the Court briefly how that flume is constructed—that is, with respect to timbers, size, and so forth.

A. Well, part of it is on trestle work and part of the way it has been excavated in rock work.

Q. What kind of planks, dimension and size—what kind of timbers enter into the making up of the flume proper?

A. Some of the timbers are 4x6, 4x4 and 2x4 for braces; the flume planking is 1½x12.

Q. Do you remember approximately the date that the construction of that flume for the full distance of 4,000 feet was completed?

A. Finished up in December, 1910.

Q. Some time in December, 1910? A. Yes, sir.

Q. And from what point to what point did it at that time extend, Mr. Mackay?

A. From the old Ebner flume to a point almost directly over Shady Bend—Cape Horn.

Q. You had that flume, then, in the latter part of



(Testimony of Angus Mackay.)

December completed with the exception, you say, there has been one board more in height put on since then?     A. Yes, sir.

Q. Was there any water run through that flume at the time it [629—479] was completed?

The COURT.—At which time?

Judge WINN.—That it was completed.

A. Part of the way; yes.

Q. You had been letting the water run through part of the way?     A. Yes.

Q. And it was taken into the flume at what place?

A. At the intake or dam.

Q. Now, Mr. Mackay, you commenced the driving, you say, of the working tunnel from the Cape Horn claim some time in December, 1910. I will ask you if work was continued on that during the fall of 1910 and the winter of 1911?

A. It was; it was up to October, 1911, I think.

Q. You remember, do you, approximately how much of that tunnel you had driven in October, 1911?

A. I think about 1,173 feet or 1,185 feet, I don't remember now just exactly—it was approximately that.

Q. The tunnel that you refer to is the same tunnel, is it, that is marked on Defendant's Exhibit "S"?

A. Yes, sir.

Q. And marked "New Tunnel"?     A. Yes.

Q. What is the size of that tunnel, Mr. Mackay?

A. 8x8.

Q. What is it intended for?

(Testimony of Angus Mackay.)

A. It was intended for the main working tunnel.

Q. Does it run with the formation or across the formation?

A. Almost crossing it; crossing the formation; yes, sir.

Q. To what extent is that tunnel in now, Mr. Mackay, from the face of it? A. About 3,500 feet.

Q. You have done some other underground work?

A. Yes, sir.

Q. In the way of what—what do you call it? [630—480] A. Drifting.

Q. Do you know, Mr. Mackay, where the old workings of the old Ebner mill are located?

A. I do.

Q. Where does this tunnel touch the Crown Point lode and the Keystone lode with respect to the old workings on the ground there from which ore was taken by Ebner to run his 10 and 15-stamp mill?

A. That would be different there—a different formation.

Q. Is your new tunnel underneath the old Ebner workings or above them? A. It is underneath.

Q. Do you know approximately how far underneath? A. No, I don't, exactly.

Q. What does the old workings consist of up there; by workings, I mean any tunnels, stoping, cross-cutting, or anything that would look towards the extracting or taking from the property the ore for milling purposes—just describe briefly to the Court what that consists of?

(Testimony of Angus Mackay.)

A. Tunnels, an open pit, chutes for starting stopes.

Q. Did you ever make any measurements of those workings, Mr. Mackay?     A. No, sir.

Q. Now, is the work still progressing on this tunnel?     A. In the underground, yes.

Q. You are still doing work in the tunnel?

A. Yes.

Q. Now, I will ask you to explain to the Court briefly what has been done in the way of excavating or building down on the Cape Horn No. 2 lode claim.

A. There has been a compressor plant of 1,950 cubic feet per minute erected; fans, electric light plant, change-rooms, a blacksmith-shop and a 5-stamp sampling mill. [631—481]

Q. When was this air-compressor installed, Mr. Mackay?     A. In 1913.

Q. What has this air-compressor been used for?

A. For driving the drills and fans.

Q. To run the tunnel?

A. Enough to run the tunnel, yes.

Q. I will ask you if prior to the installation of this air-compressor plant, you used compressed air from any other place to drive the tunnel?

A. We did.

Q. State to the Court where you got that compressed air.

A. At the old building, what we call the old compressor-room.

Q. The old compressor on the upper Ebner property?

(Testimony of Angus Mackay.)

A. Yes, sir; ran a pipe-line down to the tunnel and used the air from that old compressor.

Q. That is one of the objects that is now on this exhibit? A. Yes, sir.

Q. How long, do you remember, approximately, did you use compressed-air from that old compressor plant? A. During the season of 1911.

Q. And where did you get your power from?

A. From the intake at the old Ebner dam at Gold Creek.

Q. You used the old Ebner workings for that, did you? A. Yes, sir.

Q. Now, what is the size of this new air-compressor you have installed, Mr. Mackay?

A. 1,950 cubic feet of air per minute.

Q. I believe you gave the Court the time you had that completed. What time, approximately, if you remember, did you commence the installation of that new air-compressor and the compressor plant?

A. I don't recollect just exactly; it was some time in May or June, it is almost a year now; in August it will be a year; started [632—482] the latter part of August, 1913.

Q. How is the tunnel ventilated—the big working tunnel? A. By fans driven by water wheels.

Q. Do you remember approximately the time, Mr. Mackay, that you applied the water through the high-line flume as power for driving your air-compressor?

A. I should judge it will be a year the latter end of August.



(Testimony of Angus Mackay.)

Q. A year the latter end of this coming August?

A. As near as I can recollect now.

The COURT.—Which compressor?

Judge WINN.—The large compressor situated on Cape Horn No. 2 at the tunnel site.

Q. I refer to the new compressor, Mr. Mackay, and these questions about the compressor were answered with reference to that compressor?

A. At the new tunnel we drove.

Q. Down at the portal of the new tunnel on the Parish No. 2?     A. Cape Horn No. 2.

Q. That is the compressor plant and the compressor you testified to that you commenced installing the summer of—when?

A. A little over a year ago.

Q. As soon as you got it installed did you apply the water from your new high-line flume for driving the air-compressor?     A. We did.

The COURT.—What year was that, Mr. Mackay?

A. 1913.

Q. What else, Mr. Mackay, have you used the water from this high-line flume for, in addition to driving this new air-compressor that is installed down near the portal of the tunnel?

A. Driving two fans, electric lights and 5-ton sampling mill.

Q. When did you erect this 5-stamp mill?

A. This season.

Q. Do you remember approximately what time you completed that and [633—483] had it at work?

(Testimony of Angus Mackay.)

A. Oh, I think probably a couple of months, something like that; I couldn't tell you the exact date.

Q. When you say you used it as a sampling mill, what do you mean by that?

A. Oh, used it for sampling the ore and determining the values of the vein we have got.

Q. And you have been running that mill steadily since you commenced any testing of ores taken from the different parts of the workings on the Ebner property? A. Pretty much; yes, sir.

Q. Now, Mr. Mackay, I will ask you, going back a little—when you came up from Seattle after you had made the trip down, when you got back here some time in September, had you completed getting out the timbers for this 200-stamp mill?

A. I had.

Q. That had been completed?

A. Completed and shipped.

Q. Do you remember approximately the number of feet of lumber that you had shipped for this purpose? A. It was a little better than 300,000 feet.

Q. Now, what machinery, Mr. Mackay, covering this period of time that you have been here in control of the Ebner property has been purchased, and also what machinery was purchased before you came here and took control of it, for the installation of the mill which was contemplated to be built?

A. The machinery was ordered for a 200-stamp mill but there was only part of it shipped.

Q. Part of that was shipped over what period of time—do you remember what months and year?

(Testimony of Angus Mackay.)

A. It was in the fall of 1910, and the compressor was shipped also, that we are running now.

Q. This new air-compressor was purchased and shipped also? A. Yes, sir. [634—484]

Q. Since you have had control, or was that bought before? A. Since I have had control of it.

Q. That is the one that has been installed up there near the portal of the tunnel? A. Yes.

Q. And this part of the machinery for the 200-stamp mill was shipped here, was it? A. Yes.

Q. Mr. Mackay, do you remember when you were arrested at the instigation of the Alaska-Juneau people on October 3d?

(Not answered because of objection.)

Q. You remember the time you were arrested on some complaints sworn to by the Alaska-Juneau people, do you Mr. Mackay? A. Yes, sir.

Q. I will ask you say along on October 3, 1910, how far had your work progressed at that time on the grade line for your new high-line flume?

A. We had a good part of the grade completed.

Q. Commencing at the dam and down the country towards Cape Horn No. 2? A. Yes.

Q. You are confining this date, October 3, 1910, as the time you were arrested? A. Yes, sir.

Q. Do you remember of a man by the name of Harri going up there in the vicinity of the Ebner dam and pitching a tent? A. I do.

Q. Where, with reference, Mr. Mackay, to this grade that you said you had completed in the vicinity of the dam, was this tent pitched?

(Testimony of Angus Mackay.)

A. Pitched right across our grade.

Q. Was the position of that tent ever shifted or changed from that position until it was removed some time the latter part of the year? [635—485]

A. No.

Q. What else did this man Harri do there in the way of obstructing your work on your grade line or the putting in of the flume?

A. Oh, they built a fence across the grade for to fence it up.

Q. Do you know the name of the mining claim that he pitched that tent on?

A. I believe it was on the Fractional placer claim.

Q. Do you remember how long he stayed there with that tent?

A. No; we built a part of it around the tent; I couldn't state exactly how long he was there.

Q. What time, Mr. Mackay, did you put in the first part of the flume? I want you to understand that the question is directed towards any temporary flume or permanent flume on this grade line for the new flume.

A. I think, I wouldn't swear positively, but I think about October 4th—3d or 4th.

Q. And where was that put in?

A. At the intake.

Q. How was that done—was it put on the ground or set in a ditch that was cut for it?

A. There had to be a cut there for to get the flume in.

Q. Do you remember approximately what time



(Testimony of Angus Mackay.)

that cut was made there?

A. Some time in September.

Q. 1910?      A. 1910.

Q. I wish you would describe this building, Mr. Mackay, as near as you can that Mr. Hellenthal calls a new mill, but which I have been referring to as the old Ebner air-compressor. Just describe to the Court briefly how that building is built; I don't mean in detail; the thickness of the lumber, the mill inside, how near it is completed, and so forth.

A. It is nothing more than a shed. I understand it was built [636—486] for to put in 40 stamps; there is no machinery or anything in it except this old compressor which I have made use of.

Q. How is it inside—is there any other machinery, or arrangements made inside for the installation of machinery?

A. No; there is one retaining wall—I suppose was put in so as to place their ore bins on top of it; dry well; no machinery only the old compressor that was there.

Q. You had nothing to do with the construction of that building?      A. Nothing.

Q. You don't know what the intention of the party that built it was?      A. Except by hearsay.

Q. That building was on the property when you went there in 1910?      A. It was.

Q. Do you know, approximately, Mr. Mackay, how long that building has been on there?      A. No.

Q. Well, when you went on there in 1910 was it a new building or had it, from its appearance, been

(Testimony of Angus Mackay.)

there for some length of time?

A. From its appearance, been there for a number of years.

Q. Where does the water come from—how is that air-compressor in there driven?

A. Driven by water.

Q. Where does the water come from?

A. From the old Ebner dam.

Q. Old Ebner dam—how was it conducted down?

A. By flume on the left-hand side as you go down stream, and directly above the old building is a pipe-line which led down to the compressor.

Q. I will ask you, Mr. Mackay, when was the first time that you saw any of the Alaska-Juneau people up in the vicinity of where they finally have constructed a dam—in that vicinity [637—487] or around on the Lotta or Parish claims.

A. I cannot state definitely now when it was.

Q. Now, how long prior to the 3d day of October, Mr. Mackay, approximately, had you seen any of the Alaska-Juneau people in that vicinity?

A. Oh, not long before that—that is, in that vicinity; very short time.

Q. On the 3d day of October, Mr. Mackay, what were they doing, the Alaska-Juneau people, up in that vicinity?

A. They were trying to build a dam there.

Q. Where were they trying to build a dam—where the dam is now located, or above or below it?

A. A little below it on the Lotta claim.

Q. I will ask you, Mr. Mackay, as to whether or

(Testimony of Angus Mackay.)

not at that time there were any workings that were visible in and about that place along on what was afterwards the flume line of the Alaska-Juneau Company—that is, I mean prior to October 3d? I will ask this question: Had there been any grading or anything done on the flume line which the Alaska-Juneau afterwards established along in this vicinity on the Lotta or Parrish claim?

A. Yes; I think there had been.

Q. Had they been up there, to your knowledge, for some days prior to the 3d?

A. A few days, at the site of the dam.

Q. Had you ever ordered them off prior to the 3d, yourself? A. Not personally.

Q. Who was the man that was living on the property and staying up there during this time, Mr. Mackay?

A. A man by the name of Hunsaker, was placed there by Mr. Bent, the manager of the company.

Q. Is he the man that looked around after the Alaska-Juneau people?

A. Yes; he was watchman up there. [638—488]

Q. Now, I will ask you, Mr. Mackay, if you remember a time that there was a board fence put up there in the vicinity or across a little road that leads down from the Basin road towards the old air-compressor plant? A. Yes, I do.

Q. Do you remember about the time that fence and notice was put up?

A. Yes, I think it was some time in the latter part of September.

(Testimony of Angus Mackay.)

Q. It was before October 3d, wasn't it, Mr. Mackay? A. Yes, sir.

Q. It was there before October 3d?

A. Yes, sir.

Q. What kind of a notice was posted on it?

A. Warning trespassers not to go on the ground as claimed by the Ebner Company.

The COURT.—How is that?

A. Warning trespassers to keep off the ground.

Q. What was that—the Parish No. 2 lode?

A. No, sir; well, I don't remember whether it was on the Parish or the Lotta; I believe Mr. Wettrick testified that it was on the Parish.

Q. It was a warning for them to keep off the Ebner Company's property? A. Yes, sir.

Q. Do you know how long that fence and notice remained there, Mr. Mackay?

A. No; it remained there for some time because we wasn't using the road; they had the road fenced up.

Q. That is that little piece of road?

A. That leads from the main road and almost directly down to the old compressor—there was a chute down, a wooden chute.

Q. How long—were you on this property on the evening of the 3d at the time the Alaska-Juneau people claim that they sunk some [639—489] sort of a box or kind of a flume in there?

A. No, they had me conveniently arrested about that time.

Q. When did you next go back up to that prop-



(Testimony of Angus Mackay.)

erty after the 3d?

A. I don't remember. We were down here on trial and I couldn't state exactly when we went back.

Q. Who did you leave the work in charge of while you were down here, do you remember, Mr. Mackay?

A. Mr. Wettrick.

Q. Was Al. Black in your employ at that time?

A. He was.

Q. John Carlson? A. Yes, sir.

Q. And Riordan? A. Yes, sir.

Q. I will ask you, Mr. Mackay, as to whether or not you ever saw any workings that Mr. Tripp claims he had done near the portal of this new Ebner tunnel?

A. Yes, there was some work done there; it was an open cut which was the facing for the tunnel.

(Whereupon court adjourned until 9:30 to-morrow morning.)

## MORNING SESSION.

July 29, 1914, 9:30 A. M.

ANGUS MACKAY, on the witness-stand.

Direct Examination (Cont'd).

(By Judge WINN.)

Q. Mr. Mackay, in the driving of this large tunnel on the Ebner property, I will ask if you have been connected with that work, since the commencement of it up to the present time? A. I have.

Q. How many shifts of men have you kept at work on the driving of that tunnel? [640—490]

A. Three shifts most of the time while we were

(Testimony of Angus Mackay.)

working. There was two shifts in the early part of the season, and the latter part of last year we operated with two shifts, and we found we could use three, so we put three on.

Q. Now, I will ask you, Mr. Mackay, what do you term a shift—how many men, about, constitutes a shift working in the tunnel?

A. In the tunnel we had two drills working, which would take two machine men, two helpers and about six muckers—eight-hour shifts.

Q. Is that as many men as you could work advantageously at a time, or could you work more?

A. Not while you were driving a tunnel; all you could work to advantage.

Q. Now, Mr. Mackay, I asked you yesterday, I think, about the open cut or ditch that is at the dam through which a flume was afterwards placed—I will ask you if any water was put through that ditch and ran through it prior to putting the flume in?

A. We made a cut through there in the month of September, 1910; cut through the logs, the logs were bound together with wire cable.

Q. And was the water put through that ditch?

A. The water came through; yes, sir.

Q. Was that prior to October 3, 1910?

A. Yes, sir.

The COURT.—What was it put through for?

A. You see we had to cut through the logs that form the dam for to make a place for our intake. There was a great deal of rock piled on the bank and the logs that form the dam, and we had to cut through

(Testimony of Angus Mackay.)

that to make way for our intake and receive the flume and the headgate.

The COURT.—Cut through to place your flume in? A. Yes, sir.

The COURT.—You didn't cut through for any useful purpose except [641—491] to put your flume in?

A. Put our flume in, preparing for the flume.

Q. And the water came through that, did it, and ran through into the ditch?

A. It came through the cut we made there.

Q. You were not up there on the 4th of October, I believe you said, Mr. Mackay?

A. I don't think I was; I wouldn't be certain—I might have been up there.

Judge WINN.—I think that is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Mackay, before October, what you mean to say is, you cut out the timbers in front of the dam where the flume-box was afterwards made?

A. Made a cut for the flume.

Q. Didn't cut the timbers in the dam before that time?

A. Oh, yes; cut through the timbers; the first dam was formed by timbers and rock work in front of it.

Q. Now, Mr. Mackay, you want to testify that prior to the 6th of October, 1910, that you actually cut part of the logs that formed part of the dam out of there? A. Yes.

Q. That the logs were not cut on the 6th day of Oc-

(Testimony of Angus Mackay.)

tober, 1910; is that your testimony?

A. They were not.

Q. Let's get that straight. You know the dam there is built out of logs that extended clear across the face of it, don't you? A. Yes.

Q. And the flume is placed right in the middle, right against the dam, and receives the water right through the flume itself?

A. From one end of it, [642—492]

Q. Now, you don't want to testify, do you, that the logs in the dam at the point where the flume comes up with the dam were cut out of there prior to October 6th, 1910, do you?

A. I have so testified.

Q. Now, when were they cut out?

A. Some time in September.

Q. Were you there when that was done?

A. I probably directed the work.

Q. That the logs were cut out, that is true, is it?

A. And a great big pile of rocks removed for the gate.

Q. Now, if those logs were cut out of there, the water, you say, ran through at that time?

A. Ran through at that time.

Q. And the water continued to run through there continually—you didn't build a new dam in there and stop it up again?

A. No, we put in a temporary headgate when we got it cleaned out ready to receive the flume.

Q. You put in a headgate?

A. Temporary headgate.



(Testimony of Angus Mackay.)

Q. So the water wouldn't run through?

A. Yes.

Q. And then put the flume in afterwards?

A. Afterwards.

Q. Is that your testimony?      A. Yes.

Q. When did you come up here, Mr. Mackay?

A. You mean on this property?

Q. Yes; when were you first acquainted with the property, Mr. Mackay; were you acquainted with it when Ebner was operating it, in a general way?

A. In a general way, yes.

Q. That was about the year of 1900, along there?

A. Along about 1902. [643—493]

You know that Ebner was down there in 1903 or '04, don't you?

A. I wasn't in the country at that time.

Q. You didn't come back between that time and July or August of 1910?      A. Yes, 1910.

Q. That was your first visit here afterwards?

A. Yes.

Q. When you came back here, the property was not being operated, was it?

A. No, the property was idle.

Q. You came here about the 1st of August, 1910, didn't you?

A. Either the latter part of July or the 1st of August.

Q. About that time?      A. Yes.

Q. You had made an arrangement with Mr. Bent and some other people to come up here and build the mill—

(Testimony of Angus Mackay.)

A. I made arrangements with Mr. F. L. Underwood.

Q. To come up here and build a mill on this property? A. Yes.

Q. And you stopped in Seattle to see about the timbers?

A. Stopped in Chicago first to see about the machinery.

Q. When you got to Seattle, you got a telegram to come up and pick out a mill site; is that right?

A. Only after I had started operations in Seattle.

Q. But while you were in Seattle, you got a telegram from them to come up and pick out a mill site; is that right? A. To meet parties up here.

Q. And pick out a mill site?

A. I suppose that was the intention; it wasn't mentioned.

Q. You came up here about the 1st of August pursuant to that telegram?

A. Pursuant to that telegram. [644—494]

Q. When you came here, it wasn't until the 3d of August that you went upon the ground?

A. Third of August.

Q. You and Mr. Bent and O'Boyle and Hill and Wettrick and some others; is that right?

A. Yes, sir.

Q. Took a visit to the property for the purpose of picking out a mill site and looking the property over generally; is that right?

A. Looking principally about getting water there and locating a mill site.

(Testimony of Angus Mackay.)

Q. You went on the ground and sighted across the old Ebner flume to see where a flume could be built on the other side of the creek, and where it would hit the steep bank?

A. Yes; just got a preliminary line.

Q. Just to get an idea of where it would hit the bank?     A. Yes.

Q. You just took a level and looked across to see where it would strike to see if you could open the bank at that point?

A. Looked through the surveyor's transit and sighted along to see about where it would strike on the other side of the hill.

Q. To find out whether the hill could be cut or opened; the bank cannot be opened at every place—to find out whether you could open the bank so that flume could be placed in there; that is right, isn't it?

A. That is right.

Q. Then you went down to where the Alaska-Juneau bunk-house is—that is one of the places you looked over to see if that would make a good mill site?     A. I don't think I went down there.

Q. The other parties did, didn't they? [645—495]     A. They might have.

Q. The other parties also went down to where this old mill building is, for the same purpose, didn't they?     A. I didn't go down there.

Q. The others went down, didn't they?

A. They might have; I wouldn't swear that they did.

Q. You testified on the hearing before that they

(Testimony of Angus Mackay.)

did, didn't you? A. Very likely they did.

Q. They did, didn't they?

A. They might have gone down there.

Q. You so testified, didn't you?

A. If I did, I don't doubt they did.

Q. Now, that day that you came back to town, you didn't decide on a location for the mill that day, did you, Mr. Mackay?

A. Not except it was pretty well decided on where to locate the mill.

Q. That decision wasn't reached until about the 6th or 7th, was it?

A. Perhaps not the very spot, but it was decided to place the mill some place down near the place we have got it now.

Q. Well, your testimony before was, Mr. Mackay, that you didn't decide where you wanted to place the mill until about the 6th, wasn't it?

A. It might be in a general way, it might be pretty well fixed; you said where we wanted it.

Q. About the 6th you decided you would put the mill down near where they made the grade, is that right? A. It was fully decided about that time.

Q. Sixth of August, 1910, isn't it? A. Yes.

Q. Now, the work you did up to this time was preliminary work, [646—496] and looking the field over, then you did something looking towards the construction of the mill building; is that right?

A. Yes; we started the surveyors on to locate the flume line, and then we brushed out the mill site—that is, brushed a path all around for a stamp-mill.



(Testimony of Angus Mackay.)

Q. That is, on the 6th of August a preliminary survey line for this new flume was started, wasn't it?

A. I would say the preliminary line was started on the 3d—whenever they start operations, I would call it preliminary work.

Q. Isn't it a fact that you testified before that the preliminary work was started while you were in Seattle on your second trip, during the month of August or September?

A. The preliminary work, that is.

Q. Now, let's see about that and make sure. Now, the headgate is part of the flume construction, isn't it, Mr. Mackay?

A. The headgate?

Q. Yes. A. It is.

Q. You never testified to putting in a headgate there before, did you?

A. I don't know; probably I wasn't asked the question.

Q. This matter was up for examination, gone over pretty carefully, I think, wasn't it, at previous hearings—you never testified to anything of that character before, did you?

A. Did I not?

Q. You think not? A. I said, did I not?

Q. When you were asked before to detail all the work that was done there, that wasn't one of the things that you detailed, was it?

A. I don't understand your question.

Q. Well, did you testify as follows: "Q. Now, I will ask you [647—497] to state on the 3d day of October, 1910, just generally, what progress you had made with the building of your flume and the pre-

(Testimony of Angus Mackay.)

paring of the grades—just state generally to the Court about the grade for this high line flume?

A. Well, there was a great deal of brush, particularly on the end up near the intake; the brush and grass was so high there that it would tear a man's shirt off, and then there is some grass, a lot of grass on the Humboldt ground, where the right of way crosses the Humboldt, and we continued grading right along there at that time; and we had cleared off the brush and road for the right of way." That was your testimony then, wasn't it, Mr. Mackay?

A. Probably it was.

Q. You didn't mention anything there about any headgate you had put in or any logs that you had cut out of the dam, did you?

A. I don't think the question was asked me.

Q. The reason you didn't testify to it at that time was because you were not asked, is that right?

A. I presume that is the reason.

Q. Had you been asked you would have testified?

A. Certainly.

Q. When this case was up some three years ago, this case pending between the Alaska-Juneau Gold Mining Company and the Ebner Gold Mining Company about the Parish lode and other lode claims there that were in dispute, you also testified as a witness, didn't you? A. I think so.

Q. As a witness then, did you not testify, as follows, in answer to questions: "Q. Now, on the 3d day of October, which you have been referring to so much in your testimony, how much of this flume

(Testimony of Angus Mackay.)

that you say 4,000 feet of it had been constructed was then constructed? A. Well, there was considerable work getting ready for the flume, that is, for the flume proper. [648—498] Q. The flume had not been started? A. You mean— Q. The 4,000 feet of flume itself? A. They start the flume as soon as you begin working the right of way—that is part of the flume. Q. I mean the flume structure for which you have been constructing the timber work, the flume? A. No, it was some time afterwards, but the grade is part of the flume, I want you to understand.” Did you testify?

A. I believe I did.

Q. Didn’t say anything there about the headgate, Mr. Mackay?

A. Don’t see any place I was asked that, do you?

Q. No place where you could put that in—your counsel omitted to ask you on all these various hearings about that headgate you put in, is that right?

A. May have.

Q. And you held back the testimony on that account—because you were not specifically asked that question, is that right?

Judge WINN.—I object to the question—he has stated over and over again—

The COURT.—It is cross-examination, Judge Winn.

Q. That is true, isn’t it, Mr. Mackay?

A. What is the question?

Q. You held back any testimony on the question of you cutting that dam and putting in a headgate

(Testimony of Angus Mackay.)

because you were not asked the specific question if you had cut the dam and put in the headgate; is **that** right?

A. I might not have thought of it unless the question had been asked me.

Q. Did you think of it?

A. I cannot tell; I don't know that I took any note of it.

Q. On the preliminary hearing in this matter, didn't you testify as follows: "Q. After you arrived

in Seattle did you at that time come to Juneau?

A. Yes, sir; I came on when [649—499] I left Seattle. They wired me to come up and meet them

so as to decide on a mill site. Q. Did you come up here then? A. I did." Is that your testimony?

A. I presume so, if it is there.

Q. That was true, was it; you don't want to modify or explain that now, Mr. Mackay, but that is the state of affairs—that was true, wasn't it, at that time?

A. I presume it was.

Q. Now, did you also testify at that time, as follows:

"Q. What place or plan was arrived at as a place for building the grade while you were there?

A. While Bent was here they went out and looked over the different locations and decided on the present site, where we afterwards graded it." Did you so testify?

A. I believe I answered that a little while ago—yes.

Q. Did you testify at that same time, while you



(Testimony of Angus Mackay.)

were a witness, did you not also answer in response to questions, as follows:

“Q. And what else, if anything, was done about that before you left—do you remember?

A. Well, we located where the flume line should be and located where the mill should be built, while the directors were here, and they confirmed all the moves that were made. Q. And that was decided upon absolutely before they left? A. Yes, sir.” Is that right, is that your testimony before on that subject? A. I believe so.

Q. At the same time did you testify in answer to questions, as follows: “Q. You say you then went to Seattle and came back in September—what did you commence doing then—what, if anything, had been done upon the property in the meantime?

A. Why, the survey had been made and some men had been put to work at clearing the road for the right of way for the flume. Q. And you assumed charge of the work that was [650—500] going on on the Ebner property on your return?

A. Yes, sir; I did on my return.” Did you so testify as to all these different questions I have read to you? A. I think I did.

Q. Did you not also, while you were a witness, testify as follows: “Q. Was that the day you were arrested,—now, I will ask you what has been done with reference to putting in any part of a flume and diverting the water from Gold Creek in your new flume line—in regard to the grade for your new flume line—prior to the time you were arrested on the 3d day of

(Testimony of Angus Mackay.)

October? A. Well, we diverted water there between the 1st and the 2d of October. Q. How did you divert it? Just how much flume did you put in there? A. There were one or two boxes in there—was put in there, and a head was put in there.” Did you so testify?

A. Better get the balance of the testimony that was told the next day.

Q. You modified that at a later day—afterwards—I know, Mr. Mackay, but you so testified and afterwards modified the first and second to the fourth and fifth, that is right, is it not? A. Yes.

Q. The other testimony remained the same, except for the first and second, you changed the day afterwards to the fourth or fifth—a slightly later date—that is correct, isn’t it? A. Yes.

Q. Your testimony here says that two or three lengths of the head was put in there at that time; then, Mr. Mackay, your recollection was that the head was put in the flume at that time?

A. The first part of the boxes were put in.

Q. And also the head, is that right? [651—501]

A. Probably the permanent headgate was put in.

Q. At that time you put in a permanent headgate—that is the way you want to explain it, Mr. Mackay?

A. Well, I don’t know as the headgate we have at the present time was put in at that time—it was put in last year.

Q. You put in a new headgate—took out the headgate that was there and put in another one on the fourth or fifth—that is the explanation you make of

(Testimony of Angus Mackay.)

that testimony, is it? A. I think we did.

Q. And still put in another one afterwards?

A. Put in one where we could operate by rack and pinion last year.

Q. Did you also testify in answer to questions as follows; upon my asking you when the flume construction was commenced: "Q. After having read that to you (that is, part of the record) I wish you would now testify when the flume structure itself was commenced—if it wasn't some time after the 3d of October? A. Water was diverted on the 2d or 3d of October." Now, with the explanation that you afterwards changed that to the 4th or 5th, did you so testify?

A. I presume, if it is in the records, I did.

Q. You know what I have read over to you, it is your testimony, isn't it?

A. I have no doubt but it is.

Q. Did you not also testify at the same hearing in answer to questions, as follows: "Q. You didn't come up from Seattle, but met Mr. Bent and his party here in Juneau, to make the location of the mill site? A. Yes, sir. Q. That was your purpose in coming? A. Yes, sir. Q. And when you got here, you talked that matter over with Bent and O'Boyle and the others?" And you answered "Yes, sir." You so testified, did you, Mr. Mackay?

A. I believe I did. [652—502]

Q. Did you not also at the same time testify as follows:

"Q. And on the 3d of August you went up on the

(Testimony of Angus Mackay.)

ground and finally determined upon the location of the mill site? A. The mill site and the flume. Q. You determined upon the location of those two things upon the 3d of August? A. Well, as to the mill, I don't think the mill site was fully decided upon on the 3d of August, but it was looked over." Is that your testimony? A. Indeed it is.

Q. "Q. But not fully decided? A. Yes." Is that right? A. Yes.

Q. Then the question was asked: "Q. That was some time afterwards? A. Probably a few days afterwards." Was that your testimony?

The COURT.—Mr. Hellenthal, you are offering to this witness a lot of testimony and asking him if he testified to that on a former trial. Very well—that is where you stop. Now, will you show me how that is cross-examination.

Mr. HELLENTHAL.—Just getting out of this witness if that is his testimony—it is impeachment.

The COURT.—Show me how that impeaches.

Mr. HELLENTHAL.—His testimony at this trial does not conform to this testimony.

The COURT.—Tell me how.

Mr. HELLENTHAL.—Well, the witness is not definite, your Honor, as to the question of whether they decided upon the question of locating the mill site on the 6th of August, as he testified on the previous hearing; his testimony on this point at the present time is evasive. Now, I am getting from him definite testimony upon that question—it is for the purpose to fix that definitely.



(Testimony of Angus Mackay.)

The COURT.—Proceed.

Q. Did you then testify in answer to questions:

“Q. But not [653—503] fully decided? A. Yes.

Q. That was some time afterwards? A. Probably a few days afterwards.” Is that your testimony?

A. It is all along the same line.

Q. Then the question in that connection was:

“Then, the matter of where the mill was to be located was decided? A. Yes, sir.” Is that right? And again on the same point: “Q. You went over the various points that Tripp testified were the most probable and important for building? A. Yes, sir. Q.

You looked over all of these things? A. Yes, sir. Q. You went down to where the little Alaska-Juneau bunk-house is on the other side of the creek? A.

Yes, sir. Q. You went over on the Lotta claim where the mill construction was? A. No, I didn't go down; there; some of the other parties went there. Q. That is quite a ways down in the canyon? A. Yes, sir.”

Now, is all that your testimony, before, Mr. Mackay?

A. I presume so.

Q. That is correct, isn't it; those are the facts, are they, that you have testified to, as I have read to you?

A. I presume they are.

Q. Then the question was asked you—one of the questions: “And you finally, after about a week after the 3d, decided on that place?” Referring to the place where the mill construction was afterwards built—“That was a few days after the 3d”—is that your testimony—a few days after the 3d you decided to build the mill at the place where the excavation had been made?

(Testimony of Angus Mackay.)

A. I have been testifying to that all along—that is what I have been trying to get at.

Q. It is true, then, a few days after the 3d of August yourself and the directors of the company determined to build a mill at the place where you made the excavation?

A. I have answered that half a dozen times. [654—504]

Q. And prior to that, the work that you were doing was to look over the ground and see where you would build a mill—that is right, isn't it? (No answer.)

Q. Mr. Mackay, you know that the dam of the Alaska-Juneau Company where it was put in the 3d of October—that is the same place where the dam is now; Mr. Mackay, you know that?

A. No, it is lower down.

Q. You are sure about that? A. Oh, yes.

Q. Just as sure about that as anything else you have testified to, are you?

A. I am pretty sure of it.

Q. How much lower down?

A. Oh, I don't know how many feet it would be.

Q. You are sure, though, that it is lower down?

A. Yes.

Q. All right, let's see—Did you not testify on the previous hearing as follows: “Q. Now, the dam of the Alaska-Juneau Company which was built on the 3d of October is still in there? A. I don't know.

Q. It is? A. I don't know whether it is in the same place or not—I don't know whether it had been changed or not. Q. It is at the same place?

(Testimony of Angus Mackay.)

A. Well, as to this I couldn't say; it seems to be placed where we had the trouble." Did you so testify?

A. I might have, but you know your company had swung that—it has been moved since the decision of Judge Cushman.

Q. Mr. Mackay, I think you are mistaken about that; the dam itself and the intake has never been changed since the decision of Judge Cushman—it has simply been some anchors that the dam was anchored to. That isn't the change you testified to, is it, Mr. Mackay? A. When was that testimony taken? [655—505]

Q. That was taken on the previous hearing for a temporary injunction. Now, the change that you are talking about now, that the dam was changed, you mean a different change than that that was made in the decision of Judge Cushman, don't you?

A. Yes; I don't think they had much of a dam on the 3d.

Q. As to the place where it was, was there any other change in the dam—in the place where the dam was, except such change as was made in pursuance of Judge Cushman's decision as to the line of the Lotta—except for that, the dam is in the same place, isn't it, Mr. Mackay?

A. I don't know whether it is, really.

Q. You know the dam that was put in there on the 3d remained in that same place until after Judge Cushman's decision, don't you—that is the same point; the dam was not moved between the time it

(Testimony of Angus Mackay.)

was first put in and the time Judge Cushman's decision was rendered, was it?

A. You mean the dam that was put in there at the time you had me arrested so you could get the dam in there?

Q. Yes, that is the date.

A. Had me arrested on purpose so you could put it in.

Q. That dam that was put in there on the 3d of October—that was put in the same place and remained in the same place—the place where that dam was remained the same until after Judge Cushman's decision, didn't it?

A. It might be in the immediate vicinity of that, I wouldn't swear to it.

Q. You wouldn't swear to it—wouldn't swear it didn't stay in the same place, would you?

A. To the best of my knowledge and belief, I believe it might be in the vicinity around there. [656—506]

Q. To the best of your knowledge and belief, as far as you know, the dam is in the same place, isn't that true? A. That is what I have answered.

Q. That is true, isn't it?

A. I don't know whether it is true or not.

Q. The dam that was put in there on the 3d is in the same place that it was until after Judge Cushman's decision?

A. To the best of my knowledge and belief—that is what I answered before.

Q. You came back from Seattle on the 10th of Sep-



(Testimony of Angus Mackay.)

tember, didn't you, Mr. Mackay?

A. Somewhere around there.

Q. On the same boat with the young man that testified here, that said he came up on the 10th—Radel—do you remember the occasion of coming up with him?

A. Yes, he came up on the same boat with me.

Q. That is about the same time you came back from Seattle. I think you testified that at the point where the Alaska-Juneau bunk-house was located, the Ebner Company had a placer claim, a patented placer claim?

A. I never said it was patented; unpatented placer, that is my understanding.

Mr. HELLENTHAL.—That is all.

# Redirect Examination.

(By Judge WINN.)

Q. Now, I will ask you in regard to this dam matter that Mr. Hellenthal has been questioning you about—you were arrested on the afternoon of October 3d, before or after 8 o'clock in the evening?

A. Before.

Q. Now, did you see any work that Kinzie and his people put in [657—507] there on the night of the 3d—that is, when Kinzie claims he got his diversion? A. No, I wasn't up there.

Q. Then, whatever he put in there at that time you don't know anything about?

A. Not that night; we were down here under arrest, giving bonds.

Q. When do you remember of going back to this

(Testimony of Angus Mackay.)

particular spot, Mr. Mackay?

A. I *don't whether* I went back on the 4th or not; I think I went back on the 4th.

Q. Was there any dam in on the 4th?

A. I think not, to the best of my recollection.

Q. Then, the dam that Mr. Hellenthal was questioning you about, what dam did you have in mind—the dam that was in there when Judge Cushman tried the case? A. Yes, that is the one.

Q. That dam you claim has been moved some?

A. I believe so; if it hasn't been moved it ought to have been from his decision.

Q. Now, then, I will ask you, Mr. Mackay, about this survey and about this mill site which Mr. Hellenthal has asked you so many questions about—did Hill and Wettrick ever survey out any flume line except the flume line that you have put the grade of your new flume on? A. Not for me they didn't.

Q. All the time that you were up there on the 3d and 4th, what particular flume line were they surveying out?

A. The flume on the right-hand side of the road going down stream, near the Basin road.

Q. Where is that with reference to where your new flume was afterwards constructed?

A. Same place. [658—508]

Q. Now, then, in testifying about the place that was chosen for a mill site, did you at any time have in view any place except along in the vicinity of where you have located the mill site?

A. Yes, we located over the site where Mr. Tripp had located.

(Testimony of Angus Mackay.)

Q. That is right in the vicinity of where it is now located, isn't it?

A. It isn't one hundred feet from there, I don't think.

Q. And it was along in that vicinity that you decided on the particular spot you were going to put the mill on, was it?     A. Yes, sir.

Q. Now, Mr. Mackay, do you know the time that the two first boxes were placed in the open cut at the dam—were you present or were you not present when those two first boxes were put in?

A. I don't think I was present.

Q. Do you know about what date they were put in?

A. About the 4th, I think; around there some place.

Q. Then, if there was any water put through those flumes it wasn't put through or diverted until after the 4th or 5th of October?

A. Which flume are you speaking of?

Q. Those first two boxes that were put in by Carlson?

A. The water was put through when they were put in there; the cut was there to receive them.

Q. I believe you said before without giving the year—you mean the 4th or 5th of October—

A. 1910.

Q. Did you intend to testify in your testimony here that there wasn't any water put through that ditch before the 3d day of October?

A. Why, no; the question, I don't think, was ever asked me until to-day.

Q. If the diversion was made after the 4th or 5th,

(Testimony of Angus Mackay.)

the diversion referred to was through the boxes, was it not? [659—509]

A. Through the boxes.

Judge WINN.—That is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Just a question, Mr. Mackay—you testified in answer to Judge Winn's question that one of the places you looked at to build the mill was the place located at that time by Mr. Tripp, about 100 feet or more up the creek from where this mill was started?

A. Yes.

Q. Now, you also, when you were up there on the 3d, went down to the Alaska-Juneau bunk-house for some purpose, and the other parties went down to the Ebner mill on the Lotta—is that also true?

A. I presume so.

Q. Those places you also went, as well as the place that Mr. Tripp had in mind a short distance above the present grade?

A. I speak of that because we spoke more particularly of that location.

Q. Spoke more particularly of that location, but the others as well—considered them altogether—is that right? A. Yes, sir.

Q. Now, Mr. Mackay, just one other question—these parties that were arrested at that time were afterwards convicted by a jury, were they not—that is true, is it?

A. You better bring out the whole trial.

Q. They were convicted, weren't they?



(Testimony of Angus Mackay.)

A. The court records will show that.

Q. They were convicted, weren't they?

A. I believe so.

Q. You know, don't you? [660—510]

A. We were fined in court here, yes.

Q. I didn't ask these questions to humiliate the witness or anything of that kind—just to get the records straightened out? A. I believe you did.

Mr. HELLENTHAL.—That is all.

Q. (By Judge WINN.) Do you remember what you were convicted of, Mr. Mackay?

A. No, I don't know yet.

Judge WINN.—That 's all.

(Witness excused.) [661—511]

The defendant, to further maintain the issues on its part, introduced as a witness JOHN CARLSON, who, then being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of John Carlson, for Defendant.**

**Direct Examination.**

(By Judge WINN.)

Q. What is your first name? A. John.

Q. John, I will ask you if some time in September or October, 1910, you were in the employ of Mr. Mackay doing some work up on the Ebner Gold Mining Company's property? A. Yes.

Q. I will ask you, Mr. Carlson, if you were doing any work up there on the 3d day of October, 1910?

A. Yes, we were.

Q. What kind of work were you doing on the 3d,

(Testimony of John Carlson.)

Mr. Carlson?      A. Running an open cut.

Q. Runing an open cut—where was it with respect to the old compressor plant on the Ebner property?

A. It was down the creek further up on the Lotta claim.

Q. You knew at that time where it was claimed that the Lotta boundary line ran, did you?

A. Yes.

Q. Now, I will ask you if on the 3d day of October you saw any of the Alaska-Juneau people in that vicinity on Gold Creek?

A. Yes, they were below me where I was working.

Q. What were they doing?

A. They were working around there.

Q. The Alaska-Juneau people were? [662—512]

A. Yes.

Q. When you say down there, what do you mean?

A. Down the creek there, some were drilling and some were cutting brush.

Q. Do you know the place where they afterwards built their dam across the creek, Mr. Carlson?

A. Yes.

Q. Then, where were they working and drilling with respect to that point, above it or down below it?

A. Up above it.

The COURT.—Now, then, Judge Winn, which dam are you talking about; you say the dam they afterwards built—are you speaking of the one that was in existence at the time of the Basin case, or are you talking about the present dam of the company?

Judge WINN.—I am talking about the dam now

(Testimony of John Carlson.)

as it was before Judge Cushman rendered his decision—the Alaska-Juneau Company's dam.

The COURT.—Now, you say you are talking about the dam now.

Judge WINN.—That is true, your Honor, but it is conceded that part of the dam is the same as it was then and part of it isn't—I will reframe the question.

Q. I mean the dam—when I say if you know where the Alaska-Juneau Company's dam was afterwards built, I mean the dam as it was before Judge Cushman tried the Basin case, which trial took place in May, 1911—that is the same dam that I am referring to, Mr. Carlson. Now, then, where with respect to that dam as it was built were these Alaska-Juneau men working—below that point or above it, on Gold Creek? A. Above it.

Q. You have seen also the dam as it is now, have you, Mr. Carlson? A. Yes.

Q. When did you see it?

A. I went up there last Sunday. [663—513]

Q. And where were they working with respect to the place where the dam is now located, below or above it, on the 3d of October, 1910?

A. Working above it.

Q. Now, I will ask you, Mr. Carlson, if you were up on this property on the evening of October 3d, 1910? A. Yes, I was there.

Q. Did you see the Alaska-Juneau people doing any work up there at Gold Creek at that time?

A. Yes, there were some men working down there.

Q. What, if anything, Mr. Carlson, did they put

(Testimony of John Carlson.)

in Gold Creek the evening or night of October 3d, 1910—when I say they I mean the Alaska-Juneau people?

A. Trying to float a box in there, part of a flume.

Q. Did you see that part of the flume on the morning of the 4th of October, 1910?     A. Yes.

Q. Just describe as well as you can what sort of a structure that was that they put in there in the evening or the night of October 3d, 1910.

A. Why, it was a box about three by four and about 14 feet in length, anchored between two boulders.

Q. Where was the box or part of a piece of flume anchored with respect to the present dam of the Alaska-Juneau people?

A. About 50 feet, I should judge.

Q. Above or below it—that is, was the box above or below the dam?     A. Above.

Q. How did that box—you say it was anchored between two boulders in Gold Creek—was it on top of the water or was it sunk?

A. It was sunk into the water.

Q. Was it entirely under the water?     [664—514]

A. Part of it was, about half of it.

Q. Now, the water tunnel, of course, went in at the upper end—where did it come out at in the lower end, in the creek or outside the creek?

A. In the creek.

Q. How was it in the water with reference to the banks of the creek—that is, was it running the same way as the creek—as the banks of the creek ran, or was it running diagonally across?



(Testimony of John Carlson.)

A. A little diagonal; not right straight with the creek.

Q. Was the entire structure in the creek, or was part of it in the creek and part of it out of the creek?

A. It was wholly in the creek.

Q. Now, Mr. Carlson, I will ask you what, if anything, you were doing in the afternoon of October 4th, 1910; were you working on any flume grade, or were you working there at the same place that you worked on the 3d?

A. I was working helping to construct the headgate on the Ebner flume at that time, up at the dam.

Q. Did you go over to the dam on the 4th?

A. Yes, sir.

Q. To the Ebner dam?      A. Yes, sir.

Q. What time were you there on the 4th, was it in the afternoon?

A. Afternoon, between two and six.

Q. Did you do any work over there?

A. Yes, I helped put in the headgate.

Q. Anything else—did you help put in any flume or box there?      A. No.

Q. If you know, how was the flume ultimately put in right at the dam; was it put on top of the ground, or was an excavation made, a ditch, to put the flume in at the Ebner dam? [665—515]

A. An excavation or an open cut.

Q. Did you ever see that open cut before the boxes were put in?      A. Yes, I helped to make it.

Q. What time, Mr. Carlson—about what time did you help to make it?

(Testimony of John Carlson.)

A. Oh, that was about the 20th of September or something along there.

Q. Some time in September, 1910? A. 1910.

Q. It was before October 3d, the time Mackay was arrested, was it? A. Yes.

Q. Was there any water running through that ditch?

A. Yes, there was considerable water running through.

Q. At what time, Mr. Carlson?

A. When that water was running through?

Q. Yes.

A. Oh, the latter part of September, after the 20th.

Q. 1910? A. 1910.

Q. Now, I will ask you, Mr. Carlson, whether or not the Alaska-Juneau Company had any dam in Gold Creek up around where they were working, or in the vicinity of where they afterwards constructed a dam, on the morning of the 4th of October, 1910?

A. No, they hadn't.

Q. I will ask you, Mr. Carlson, just to state whether or not, when you went up there on the property on the morning of the 4th of October, 1910, there was any dam in the creek in the vicinity of where the Alaska-Juneau people afterwards constructed a dam? A. No, there was no dam there.

Q. Explain to the Court all that you saw there on that morning [666—516] with reference to those pieces of flume which you say you saw in the creek, and any other structure of any other kind that was

(Testimony of John Carlson.)

in the creek at that time, if there was any?

A. There was a couple of logs laid across the creek, and a little brush at one end of them.

Q. Where were those logs with respect to where they afterwards constructed the dam, where the dam is now, above or below the site of the present dam?

A. That was above, where the box was put, between the two boulders.

Q. Then, it *would above* where they afterwards put in the dam and where the dam is now, wouldn't it?

A. Yes, sir.

Q. About how far then were those logs above where they afterwards constructed the dam?

A. Oh, that would be about 50 feet, I should judge.

Q. Did you do any work on the grade of the flume line on the 4th, except what you have already stated that you did over there?      A. Fourth of October?

Q. Yes, October, 1910?      A. No, not after that.

Q. Did you on that day see any tent in the vicinity of the Ebner dam, on the 4th day of October, 1910?

A. Yes, sir; there was a tent there.

Q. Did you notice about whether or not there had been any grade made or cleared away from the Ebner dam down the creek at that time?

A. Yes, there was about 1200 feet or probably more.

Q. Where was this tent pitched, with reference to the grade, Mr. Carlson?

A. Toward the headgate of the flume.

Q. No, I mean where was this tent pitched with

(Testimony of John Carlson.)

reference to the grade—was it on the grade or off the grade? [667—517]

A. The tent was off the grade, flume grade.

Q. How much longer did you continue to work for Mr. Mackay up there during the year of 1910—do you remember about the time you quit, Mr. Carlson?

A. I quit there about the middle of December, 1910.

Q. About the middle of December?

A. December, yes.

Q. When you quit there in December, do you remember about the condition of that grade line as to whether or not any flume had been put on there, and to what extent the work had been carried on?

A. Yes, there was considerable flume put in there at that time, about 3,000 feet, I guess.

Q. You were at work on that flume line, you say, about the 5th or 6th of October, were you?

A. No, I was in the blacksmith-shop sharpening tools.

Q. Where was the blacksmith-shop, Mr. Carlson; was it near the Ebner dam, or down near this flume as it was afterwards constructed?

A. Opposite the flume that was afterwards constructed and below the Ebner dam.

Q. It was up in the neighborhood of the old Ebner workings on the Ebner property? A. Yes.

Q. I will ask you, Mr. Carlson, if you remember the condition of the water of Gold Creek on the 3d or 4th of October, 1910? A. High water.

Q. Did you ever have any experience in building



(Testimony of John Carlson.)

dams? A. Not much, just some.

Q. You have done some dam building?

A. Yes, helped to.

Q. I will ask you, Mr. Carlson, as to whether or not in your [668—518] opinion a dam could have been constructed in Gold Creek at this place in question on the 3d or 4th of October, 1910?

A. No, it could not, unless the water was turned out of its natural channel.

Judge WINN.—That's all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Carlson, on October 4th, 1910, you put in a headgate, you say, at the Ebner dam? A. I did.

Q. Are you sure you put in the headgate of the Ebner dam?

A. It is part of the headgate; it isn't the same one that is there now.

Q. But you did put a headgate in? A. I did.

Q. Are you sure that on that day—what did you do there at the dam; how did you put the headgate in?

A. We placed it in the open cut that was made for it.

Q. The headgate isn't in the cut, it is in the dam, isn't it? A. It is in the dam, too.

Q. Did you cut the logs in the dam?

A. I didn't cut any logs in the dam.

Q. How did you get through the dam?

A. Of course, the dam was constructed of logs,

(Testimony of John Carlson.)

and very naturally there would be logs in it; I didn't cut any logs.

Q. Who cut them?

A. There were several parties working there.

Q. They cut the logs?

A. Maybe they did; I don't know whether they did or not.

Q. You know whether a whole was made to put the wet dirt in? [669—519]

A. Why, yes; I helped to excavate part of it.

Q. Did you help to make it? A. I did.

Q. Who cut the logs? A. I couldn't tell you.

Q. Do you swear positively you saw them cut the logs on that day?

A. I didn't say I saw them; no, I couldn't say that for I couldn't tell you who it was.

Q. Do you swear positively they didn't cut the logs? A. On October 4th?

Q. No, in September?

A. Yes, they were cut in September.

Q. Who cut them?

A. I don't know who cut them.

Q. Were you there when it was done?

A. I was, yes.

Q. Who else was there?

A. Al Black, Ed Sykes and some others.

Q. What were Al Black and Ed Sykes doing there?

A. They were working there at the same time I was.

Q. What time was that?

(Testimony of John Carlson.)

A. That was between the 14th and 20th of September.

Q. They were all working on that job?

A. Working along that grade, yes.

Q. But I am talking now about the place where the flume was afterwards put in the dam, Mr. Carlson; were they all working at that particular place?

A. Not all the time, no; it only took a few days to make that open cut.

Q. How many days?

A. About three days, I think, it was. [670—520]

Q. Now, who worked on that open cut?

A. I did.

Q. Who else?      A. Ed Sykes.

Q. Who else?      A. Al Black.

Q. Who else?

A. There was another fellow, I don't know his name.

Q. Now, who cut the timbers in the dam?

A. I don't know.

Q. You didn't cut them yourself?

A. I didn't cut them.

Q. The timbers were not cut by you?

A. Not by me, no.

Q. Isn't it a fact that those timbers were cut on the 6th day of October and the flume put in?

A. No, sir.

Q. That is not a fact?      A. That isn't a fact.

Q. Do you know Lindsay, the surveyor or engineer who was working for the Alaska-Juneau Company?      A. No, I don't know him.

(Testimony of John Carlson.)

Q. Do you know Russell Casey?

A. No, I don't know him; I have seen him.

Q. Do you remember the day that the flume was put in there?     A. What flume do you mean?

Q. When was the *first* or flume put in at the headgate?     A. The Ebner flume?

Q. Yes.     A. The 4th of October.

Q. You are sure it was on the 4th and not the 6th?

A. I am positive it was on the 4th.

Q. Now, you say Harri was up there with a tent at that time? [671—521]

A. He was there, yes, sir.

Q. Now, you started that flume and you didn't take any lunch with you?

A. I was baching up at the Ebner boarding-house.

Q. The men worked all noon hour, didn't they?

A. No, I don't think they did,—yes, they did.

Q. Worked through the noon hour, do you know why?

A. Because they wanted to get that,—they had to take that lumber from the mill that the box was made of and the headgate, and they wanted to put it in that afternoon.

Q. Isn't it a fact that you fellows were working there when Lindsay was up there that morning?

A. I couldn't say.

Q. Didn't you hear those fellows say you had better work there during the noon hour and get the flume in before Lindsay could get an injunction served?

A. No, I didn't hear anybody make that remark.



(Testimony of John Carlson.)

Q. That is not the reason you worked during the noon hour?

A. I didn't work during the noon hour.

Q. Did any of the others?

A. Maybe some of the others did.

Q. You didn't work during the noon hour yourself?     A. I was in the blacksmith-shop.

Q. What is the day you put in the headgate and turned the water through the flume?

A. The 4th of October.

Q. That was the first piece of flume that was put in?     A. Yes.

Q. There wasn't any piece of flume put in until that day?     A. No.

Q. There wasn't any lumber on the ground?

A. I couldn't say to that; I don't think there was.

Q. Who brought the lumber up there, Casey?  
[672—522]

A. No, I don't know who brought any lumber up there.

Q. Do you remember where the lumber came from that those boxes were made of?     A. Yes.

Q. Where did it come from?

A. From the old Ebner stamp-mill.

Q. Carried up there from the old Ebner stamp-mill?     A. Yes.

Q. How much lumber was carried up there?

A. Enough to construct the headgate.

Q. Was any more carried up there?

A. Not that I know of.

(Testimony of John Carlson.)

Q. There wasn't any lumber carried up there to make the flumes out of?

A. I couldn't say to that.

Q. You know, don't you, where the lumber came from?     A. Yes.

Q. Where did it come from?

A. From the old Ebner mill.

Q. Was the lumber—there was lumber carried up there in order to construct the headgate?

A. Yes.

Q. Was there also lumber carried up to construct the flume, or did they get that from somewhere else?

A. Somewhere else.

Q. That came from somewhere else?     A. Yes.

Q. That didn't come from the old mill?     A. No.

Q. And the lumber that came up was to build the headgate?     A. Yes.

Q. And you built the headgate?

A. I helped to. [673—523]

Q. That was on the 4th of October?

A. Fourth.

Q. And it was the same day that those boxes were also put in, later in the day?

A. No, that flume was put in towards evening.

Q. You were working on the headgate in the morning?     A. No, in the afternoon.

Q. What was put in first, the headgate or the flume-boxes?     A. The headgate.

Q. The headgate was put in first?     A. Yes.

Q. And the lumber came up and you put in the flume-boxes?

(Testimony of John Carlson.)

A. I don't know anything about the flume-boxes; I was in the blacksmith-shop.

Q. You don't know when the flume-boxes were put in?     A. They were put in afterwards.

Q. You don't know whether they were put in that day or not?     A. I couldn't say to that.

Q. You don't know whether there was any flume put in that day?

A. The headgate was put in; that is all the flume I know anything about.

Q. You don't know anything about the boxes?

A. No, I don't.

Q. You didn't see any boxes put in?     A. No.

Q. All you did see put in was the headgate?

A. I helped to put that in, yes.

Q. You put that in before you put the boxes in?

A. Certainly.

Q. Did you excavate the cut that day?     A. No.

Q. Did you do any excavating that day at all?

A. None at all. [674—524]

Q. You put in the headgate at that time?

A. Yes.

Q. Before that time there was no headgate?

A. No headgate.

Q. How is that?

A. There was no headgate before that.

Q. You put in the first headgate that was put in there—there was a temporary headgate?

A. Yes.

Q. There was just simply a hole in the dam before that?     A. An open cut.

(Testimony of John Carlson.)

Q. The water was running through it?

A. It was.

Q. Was there water running through while you were working in the headgate?

A. It was turned off.

Q. Was it turned off that morning?

A. It was turned off before we started putting in the headgate; there was too much running through the cut to put the headgate in.

Q. And you turned the water off on the 4th of October—cut off the water so you could put in the headgate?     A. Yes.

Q. Before that time there was a hole right through the dam?     A. There was.

Q. And nothing in the hole?

A. The hole was open.

Q. And the water could run right through it?

A. It could.

Q. Just a hole broke in the dam?     A. Yes.

Q. Then, before you filled that break in the dam so as to put in the headgate, you put in the dam up above? [675—525]

A. We didn't put in any dam; we put something to turn the water off.

Q. Put something in the creek to turn the water?

A. Exactly.

Q. That was a temporary dam?     A. Correct.

Q. That was put in there on the morning of the 4th of October, 1910?

A. No, it was put in there about noon.

Q. About noon of the 4th of October, 1910?



(Testimony of John Carlson.)

A. Correct.

Q. After you put that in, then you put in the headgate? A. Yes.

Q. That was the first headgate that was put in there? A. That is the first one.

Q. That was only a temporary— A. One.

Q. Now, you are positive of that—about all that?

A. I am.

Q. You are sure that was the first one, the first headgate in there?

A. It was the first one I ever seen.

Q. That was not a permanent one, but a temporary one?

A. Just a temporary one.

Q. Now, on October 3d you were up on the Lotta claim, I understand? A. I was.

Q. The Alaska-Juneau had men working down where the present dam is, in that neighborhood?

A. They were, yes.

Q. Quite a lot of men working along that flume grade? A. A few.

Q. A good many? [676—526]

A. There were nine.

Q. Right at the dam? A. Yes.

Q. There were other men working further down the creek?

A. I think there was a few working on the grade.

Q. You think there were a few working on the grade? A. I think there was.

Q. That day they put a couple of poles across the creek and put in the dam, did they not?

(Testimony of John Carlson.)

A. A couple of logs laid across the creek.

Q. Those logs were laid across at the same place where the dam now is, were they not?

A. No, sir.

Q. Where, with respect to that place?

A. Quite a ways above.

Q. How far above?      A. Forty feet.

Q. Was that also the place where they put the box in?

A. No, that was about 10 feet below the logs.

Q. So, that is about 50 feet above where the flume is now; is that right—where the intake of the flume now is?      A. Just about, yes.

Q. Did they make any cut or excavation in the bank to put that box in?

A. Well, they cut out for the grade, yes.

Q. Right there where they put the box in.

A. No, not there; it was all cut by hand between the two boulders that were in the middle of the creek, as you refer to it.

Q. That box was put in there right at the end of the poles, wherever the poles were, so that the water would run in the box?

A. I didn't see no poles there, I said boulders.  
[677—527]

Q. Well, where were those two long poles?

A. They laid across the creek.

Q. They were so laid across the creek that the water would run across them into the box?

A. No, they were laid there for foot logs.

Q. Sort of protection bridge?      A. Yes.

(Testimony of John Carlson.)

Q. What was the box for?

A. I couldn't tell you that; the water ran through the box, and I suppose it represents something.

Q. This was in the afternoon of October 3d, that you saw that box there?     A. No, sir.

Q. When did you see it?

A. Later in the evening—oh, about 8 or 9 o'clock.

Q. Eight or nine o'clock, you say?

A. Yes, sir.

Q. Eight or nine o'clock in the evening of October 3d that the Alaska-Juneau had a lot of men working there?     A. A few, I don't know how many.

Q. Isn't it a fact that they put in the dam that evening of October 3d about 8 o'clock at the same place where the dam now is?

A. If they did, it wasn't there on the morning of the 4th.

Q. Would you testify that they didn't put a dam at the place where the dam now is at 8 o'clock in the evening of the 3d of October?

A. I don't see how they could put in a dam, the water was too high.

Q. From your observation, do you say that they could not put it in?

A. It was too dark to see that distance; I was 50 feet above there.

Q. You didn't know what they were doing, then?  
[678—528]

A. I could see men down there.

Q. You don't know whether they were putting in a dam or what they were doing?

(Testimony of John Carlson.)

A. I couldn't distinguish, no.

Q. As far as you could see, they might have been putting in a dam at the place where the dam now is, on October 3d?     A. No, they couldn't put it in.

Q. I understand you are a dam expert, aren't you?

A. No, sir; I am not.

Q. You know when a dam can be put in a creek and when it cannot, don't you?

A. I have some idea of it.

Q. Ever work under the engineers of the Alaska-Juneau Company?     A. No, sir.

Q. Ever see them building a dam?

A. No, sir.

Q. Don't know much about their methods, do you?

A. No, sir.

Q. They might be able to put a dam where you couldn't put it; isn't that right?     A. Maybe so.

Q. What you mean to say is that you wouldn't be able to put a dam in there at that time, because of that high water, but you don't mean to testify that engineers who know how to build a dam couldn't put a dam in, do you?

A. There wasn't any dam in there at that time.

Q. That is what you mean to say, that engineers who know how to build a dam couldn't put a dam in at that time?

A. Had no material to construct a dam with in the first place.

Q. You don't mean to testify that an engineer who knew how to construct a dam in high water such as the engineer of the Alaska-Juneau Company would



(Testimony of John Carlson.)

not be able to put in a dam at that time; that isn't your testimony, is it? [679—529]

A. Probably they could.

Q. And you didn't see that they didn't put in a dam—it was too dark for you to see that, wasn't it?

A. Yes, it was too dark at that time.

Q. You couldn't tell whether they were putting in a dam or what they were doing, could you?

A. No, it was too dark.

Q. And they were working right above the falls of the creek, weren't they?

A. Yes, a considerable distance above the falls.

Q. You could see that they were working at the place where the dam has since been put in, couldn't you?

A. No, they were working up above where the dam now is.

Q. You saw them make a cut in the bank there?

A. No, sir; they didn't make no cut there.

Q. They couldn't put a flume in there without making a cut, could they?

A. They didn't have to make a cut; there was two boulders in the center of the creek and this box or flume, or whatever you may call it, was placed in there.

Q. When was that done?

A. That was done in October.

Q. What time in the day?

A. Oh, it was in the night; it was dark; between 8 and 9, I should judge.

Q. And you say that was done at that time?

(Testimony of John Carlson.)

A. I know they had a box there in the afternoon.

Q. But you couldn't say what they did with that box in the evening?     A. No, it was too dark.

Q. In the afternoon you say the box anchored between those two boulders?

A. No, sir; it was laying on the bank. [680—530]

Q. In the evening you *don't what* they did with the box; it was too dark for you to see?

A. They must have floated it.

Q. You don't know what they did with it in the evening, do you?

A. They must have put it between the two boulders; it was there the next morning.

Q. You didn't see them put it there?

A. No, it was too dark.

Q. You don't know where they put it that evening?

A. Don't know what they done with it, except where I found it the next morning.

Q. That evening you don't know, they might have put that box at the intake of the present flume—you couldn't see whether they did or not?

A. No, I couldn't see, but it wasn't there the next morning.

Q. If you couldn't see where it was, you couldn't testify where it was, could you?

A. Well, it was in the middle of the creek.

Q. Could you see it in the middle of the creek?

A. I could, yes; the water was running right above the sides of this box.

Q. On the evening of October 3d, could you see it

(Testimony of John Carlson.)

there? A. No, this was on October 4th.

Q. On the evening of October 3d, you say you don't know where that box was, don't you?

A. The last I saw of it it was laying on the bank.

Q. That was in the afternoon?

A. That was in the afternoon.

Q. You didn't see it again that evening?

A. The last I seen of it they were wrestling around with it.

Q. You don't know where they floated it to?

A. Between the two boulders. [681—531]

Q. Did you see them float it between the two boulders? A. No, but they must have.

Q. I am asking you to testify to what you saw.

A. It was too dark to see what they did.

Q. You don't know what they did with that box that evening? A. No.

Q. Don't know where they put it?

(No answer to the last question.)

Q. I call your attention to the photograph marked Plaintiff's Exhibit No. 3, and ask you to look at it and tell me whether those are the two boulders concerning which you are testifying—you see those boulders that are in the picture there, don't you?

A. Yes.

Q. Right about the lower middle of the picture, a little towards the left-hand corner—you see those boulders, don't you? A. Yes, I see them.

Q. Are those the boulders you are talking about?

A. I couldn't say,

Q. Those may be the boulders between which the

(Testimony of John Carlson.)

box was anchored or between which the box was put?

A. They might have been, I couldn't say for sure.

Q. They may have been the boulders—you won't testify they were not?

A. I won't testify that they were.

Q. You see those logs crossing the creek there?

A. Yes, sir.

Q. You see that dam in there?

A. No, I don't see no dam.

Q. You don't see any dam?

A. No. [682—532]

Q. That was the condition of affairs there when you were there on the morning of October 4th, wasn't it?

A. I couldn't say; this picture may have been taken of some other section of the country, it doesn't look natural to me.

Q. I will ask you now if that picture doesn't show things as they appeared on the morning of October 4th, at the point shown in the picture?

A. No, it don't look natural to me—that picture don't.

Q. You mean to tell me that the dam shown in that picture was not there on the morning of October 4th?

A. I couldn't say.

Q. You don't know whether it was or not?

A. I don't know anything about that picture.

Q. Do you know anything about that dam?

A. It don't look like a dam to me—where is that dam?



(Testimony of John Carlson.)

Q. Up there, and you see the water running through it, don't you?

A. Is that a dam? It don't look like a dam to me.

Q. You don't know a dam when you see it, do you?

A. Probably not from that picture; that is simply a picture of a couple of boulders and a couple of logs; maybe you call that a dam.

Q. There may have been such a structure as is shown in that picture there on the morning of October 4th? A. That ain't the way I seen it there.

Q. How did it look when you were there?

A. Well, there was two big boulders in the middle of the creek; there were two logs laying up above it—there was two logs laying below the boulder.

Q. Anchored right behind the boulders?

A. Anchored below the boulders.

Q. Looking up creek? A. Yes.

Q. You were looking at it on the morning of October 4th, perhaps, [683—533] from a different angle, Mr. Carlson, from that shown by this picture?

A. Yes.

Q. You didn't go down to the creek? A. No.

Q. And you didn't get the view of it that is shown in that picture? A. No, I didn't.

Q. You were looking the other way at it?

A. I was looking down the creek.

Q. That is the reason you say the things shown in the picture look different to you. Look at it again with that understanding and see if that makes it any clearer to you; you didn't get the view of it that

(Testimony of John Carlson.)

is shown in that picture, because you were below the dam?

A. I cannot make anything out of that picture.

Q. Now, Mr. Carlson, you were up about the place the dam now is and looked down on it, is that right?

A. Correct.

Q. You didn't go below it at all?

A. Not at that time.

Q. Not at all? Not until sometime later?

A. Not until sometime later, yes.

Q. When did you go below it?

A. Well, I don't know, I couldn't give the date of it.

Q. When you went below it, you saw the dam, didn't you, had been built?

A. It had been built where the dam is now.

Q. Yes. A. Yes.

Q. That was there the first time you went below the place where the dam now is?

A. There was no dam there then. [684—634]

Q. How long after the 3d of October did you see the dam built there?

A. It was about two weeks afterwards; let's see, it was over two weeks after.

Q. And still no dam there?

A. After the 4th of October.

Q. And still no dam there?

A. They were constructing a dam there then.

Q. They were constructing a dam then?

A. Yes.

Q. Where were they constructing the dam?

(Testimony of John Carlson.)

A. Just about where those two logs laid across.

Q. Just where the two logs lay across—the same place? A. About the same place, yes.

Q. And the dam that they were constructing then is the same dam as is there now? A. No.

Q. When was it changed?

A. I don't know when it was changed.

Q. It is the same place I mean?

A. No, sir; it is not.

Q. The dam they were constructing two weeks later, when you were there two weeks after the 3d of October, was a different dam at a different place?

A. No, they constructed it where the logs were laid across.

Q. Two weeks after October 3d?

A. About two weeks.

Q. They were working at a point where the logs were laid across the creek on October 3d?

A. They were.

Q. When you were on the ground two weeks after October 4th, they were building a dam at the place where the logs were laid across on October 3d and 4th? [685—535]

A. Correct, as near as I can tell, yes.

A. And that place was a little above the place where the flume was anchored on the morning of October 4th? A. Correct.

Q. Now, that dam that was built there two weeks after October 4th, isn't that the same place the dam has always been since? A. No, sir.

Q. That was where, with reference to the place

(Testimony of John Carlson.)

where the dam now is?

A. It is about 50 or 60 feet above.

Q. In other words about two weeks after October 4th a dam was put up the creek 50 or 60 feet above the place where the dam now is—is that correct?

A. Pretty positive of it.

Q. About two weeks after the 4th of October did they have any flume grade built at the dam?

A. No, they hadn't got that far with their flume grade.

Q. Was there any flume there at the place they were putting in the dam at all?

A. Hadn't gotten that far.

Q. Any part of the flume there?      A. No.

Q. No boxes in there at all.

A. I didn't see any.

Q. You wouldn't testify that there were not one or two boxes at least?

A. Didn't see them.

Q. No boxes or dam in any point there, except what was done two weeks after October 4th—is that right?

A. I didn't see anything below it.

Q. In fact you didn't see much of anything anywhere, did you?

A. Not after that date; no.

Q. I now call your attention to a photograph marked Plaintiff's [686—536] Exhibit No. 5, and ask you to look at that and tell me whether that isn't the way things looked there on the morning of October 4th—did you look at that picture?



(Testimony of John Carlson.)

A. Yes, I looked at it.

Q. Are you willing to testify that that doesn't represent things as they were on the ground of the morning of October 4th?

A. I can't make anything out of that picture.

Q. You don't know whether that is a picture of the flume or the dam or anything else?

A. Don't know where the picture was taken.

Q. The things shown in that picture are entirely unfamiliar to you?

A. It don't look natural to me.

Q. You *don't anything* about it?

A. I don't know anything about it.

Q. That doesn't look like the place where the Alaska-Juneau dam was built on the morning of October 4th, 1910?

A. That picture might have been taken from an angle, from a different place than I was standing; if it was taken from the place where I was standing it might look natural.

Q. You wouldn't testify that that condition didn't exist upon the morning of October 4th—do you see that flume-box shown in the picture?

A. I can see kind of a box there.

Q. Did you see that on the morning of October 4th?

A. I couldn't say; that doesn't look natural to me, on October 4th.

Q. Does that show the flume-box as it was on October 4th?

A. It doesn't look the same to me now that it did

(Testimony of John Carlson.)

then—it don't look natural to me.

Q. Well, now, I am not asking whether it looks natural or unnatural; does that show the flume-box as it was on October 4th—the morning of October 4th? [687—537]

A. It doesn't look to me now in that picture as it did then.

The COURT.—Now, Mr. Carlson, you were asked the question whether or not that shows the flume-box as you saw it on such and such a day; if it does show it, answer yes; if it doesn't show it, answer no, if you don't know, say you don't know.

A. No, it doesn't look the same.

Q. That flume-box that you saw on the morning of October 4th, had that been broken up with rocks?

A. Hadn't been when I seen it.

Q. What time in the morning did you see it?

A. About 7 o'clock.

Q. Then did you proceed to go up the hill and break it up?

A. No, I went further up to the blacksmith-shop.

Q. What were you doing there.

A. Sharpening steel up there.

Q. You didn't take any part in rolling rocks down on that flume? A. No.

Q. Others did that?

A. Somebody else done that.

Q. I now call your attention to a photograph marked Plaintiff's Exhibit No. 4, and ask you to look at it and see if you recognize that picture.

A. No, I don't.

(Testimony of John Carlson.)

Q. That doesn't show the conditions on the ground in the vicinity of the Alaska-Juneau dam and flume on the morning of October 4th, 1910?

A. No—what side of the creek was that picture taken?

Q. The picture shows, Mr. Carlson, I couldn't tell.

MR. SIMIN HELLENTHAL.—Right-hand bank, downstream.

A. That would be opposite from where I was; the picture looks altogether different.

Q. That might be a correct representation if the picture were taken from the right-hand bank of the stream looking down-stream? [688—538]

A. Might be; might look different.

Q. You see that box in there? A. Yes, I see it.

Q. You won't testify, Mr. Carlson, that that isn't an accurate and correct picture of that box as it was there on the morning of October 4th, would you?

A. I never seen the box in that kind of shape.

Q. That box is broken up, isn't it?

A. Certainly looks like it.

Q. When you saw it, it hadn't been broken?

A. No.

Q. That is the position the box was in on the morning of October 4th—the same place, except it wasn't broken? A. I couldn't say as to that.

Q. You cannot say where the box was on the morning of October 4th? A. Not in this picture.

Q. You don't know whether that is the place in the creek where the box was on the morning of October 4th or not? A. No.

(Testimony of John Carlson.)

Q. You don't know whether that is the point, in the picture where the box was in the creek on the morning of October 4th? A. I cannot say.

Q. You are not familiar enough with the ground there and the canyon to say?

A. Not the way this picture shows it.

Q. You don't know that canyon well enough to tell whether that is the same place—that is, on the morning of October 4th—whether that is the place the box was or not?

A. Not the way this picture is taken, I cannot; I was on the left-hand side of that creek going upstream.

Q. You are not able to say whether that box was in the shape shown in the picture or not? [689—539] A. No, it was not broken.

Q. It was not broken? A. No.

Q. That was done after you first came up there?

A. Yes, sir.

Q. You were not down there when the rocks were rolled down on it? A. On the flume?

Q. Yes.

(Not answered because of objection, and question withdrawn.)

Q. Does that show the boulders upon which the poles were anchored, Mr. Carlson—this exhibit No. 4?

A. It looks like the two boulders that the box was anchored between.

Q. It looks like the same boulders? A. Yes.

Q. And those are the poles shown in that picture



(Testimony of John Carlson.)

that you have reference to as being anchored to the boulders?

A. It looks that way, yes, sir.

Q. And the box then looks to you as though it was in the position with reference to the boulders that you saw it on that morning?

A. This box was between these two boulders, if they are the same boulders.

Q. They look to you like the same boulders, don't they?     A. They look similar.

Mr. HELLENTHAL.—I think that is all.

(Whereupon the court adjourned until 2 P. M.)

#### AFTERNOON SESSION.

July 28, 1914, 2 P. M.

JOHN CARLSON, on the witness-stand.

#### Redirect Examination.

(By Judge WINN.) [690—540]

Q. Now, I probably did not exactly understand, Mr. Carlson, but did you say that you did know or that you did not know where the lumber came from that was put in those first two boxes or pieces of flume that were put up in the open cut near the Ebner dam on the 4th day of October?

A. Why, that is the lumber that was placed there to construct the headgate, came out of the old Ebner mill.

Q. Do you know where the lumber came from to put the boxes in?     A. No.

Q. Then you don't know where that lumber came from?     A. No.

(Testimony of John Carlson.)

Q. Now, Mr. Hellenthal questioned you, Mr. Carlson, considerably about as to whether or not there was any part of a dam, or a dam put in where the two logs that you testified concerning were put across Gold Creek; I will ask you as to how much of a dam was ever constructed at that point where those two logs went across?     A. At that time?

Q. Yes.

A. There was a couple of logs laid across and at one end was some brush and rock to hold it in place.

Q. Do you remember the exact time, and how long that dam that they constructed across those logs, remained there?     A. No, I don't.

Q. Now, I will ask you as to whether or not any portion of that work was done at that point; after the arrest of Mackay, after the 3d day of October, was there some more work done where those logs were?

A. Yes, that is when actual construction commenced, on that day, they hadn't done it before.

Q. Do you remember or know anything about as to what time they commenced the dam that they afterwards constructed which you testified was further down the creek? [691—541]

A. No, I don't.

Q. You don't remember the time they commenced work on that?     A. No, I wasn't here then.

Q. Now, I will ask you, Mr. Carlson, if there is any difference in the bed of the creek, as to the width of the surface over which the water flows up at the Ebner dam from what the width of the channel is

(Testimony of John Carlson.)

down a little way, between the old Ebner air-compressor and clear down to where the dam of the Alaska-Juneau was constructed—is there any difference in the width at those points?

A. Why, yes; it is considerably narrower than what it is at their dam.

Q. What would you say about it, is it narrower—

A. Between the two dams?

Q. Is it wider or narrower up at the Ebner dam than it is down just above where the Alaska-Juneau dam is constructed?

A. Below the Alaska-Juneau dam, did you say?

Q. I mean up above the Ebner dam, or where the Ebner dam is constructed, whether that is a wider space of ground there than it is down for 60 or 70 feet above where the Alaska-Juneau dam is constructed? A. Yes, it is a little wider.

Q. Do you know anything about whether there is a different grade in the creek at the two points which I have indicated to you—that is, does the water flow swifter in one place than it does in the other?

A. The water flows considerably swifter down at the Alaska-Juneau dam than it does at the Ebner dam.

Q. I will ask you, Mr. Carlson, as to whether or not you ever looked to see whether there had been any line brushed out across the creek, in the neighborhood where the present dam of the Alaska-Juneau Company is, right above the dam? [692—542]

A. Yes, I noticed a line brushed out there in September.

Judge WINN.—That is all.

(Testimony of John Carlson.)

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Did you see them brushing the line out, Mr. Carlson?     A. No, sir.

Q. That was brushed out just about that time?

A. It was brushed out before I went to work there.

Q. That was in the latter part of September?

A. The latter part of September.

Q. Those poles with the brush piled behind them and rock on the brush, were put in there during the early part of October, the 3d or 4th, and that was afterwards changed to a dam—is that right?

A. I presume that was part of the construction of the dam.

Q. How is that?

A. I presume that was part of the construction of the dam.

Q. That was on the 3d or 4th of October, either one of those two days, the poles were put there and the brush behind it?

A. I noticed them on the morning of the 4th.

Q. You noticed it there on the morning of the 4th of October?     A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.)     [693—543]

The defendant, further to maintain the issues on its part, introduced as a witness AL GRAHAM, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:



**Testimony of Al Graham, for Defendant.**

**Direct Examination.**

(By Judge WINN.)

Q. Your name is Al Graham and you reside in Juneau, do you?     A. Yes, sir.

Q. How long have you been in Juneau?

A. About ten years.

Q. You were here in the year of 1910, were you?

A. Yes, sir.

Q. Did you ever do any work up on the Ebner property while Mr. Mackay was superintending some work up there?     A. Yes.

Q. Do you remember approximately what time you commenced to work up there in the year of 1910?

A. 19th day of September.

Q. 19th day of September?     A. Yes.

Q. 1910?     A. Yes.

Q. Where did you first commence to work when you went up there, Mr. Graham, with respect to the name of some mining claim?

A. I was working on the Parish, doing assessment work, driving a tunnel.

Q. Parish No. 2?     A. Yes.

Q. How long did you work at that assessment work, Mr. Graham?

A. Twenty days; somewhere around about twenty days. [694—544]

Q. Were you working on the 3d day of October, 1910, the day that Mr. Mackay and some other parties were arrested?

A. I was working in the tunnel, and I was working on the Lotta, too, both places; about ten o'clock

(Testimony of Al. Graham.)

I went up and worked on the Lotta.

Q. Went up there about 10 o'clock?

A. Somewhere around there.

Q. Did you see any of the Alaska-Juneau people working in the bed of the creek?     A. Yes.

Q. Up there near the Ebner air-compressor, or just below the Ebner air-compressor?

A. It was below it.

Q. When was the first time, Mr. Graham, that you ever saw them doing any work in and about that spot?     A. That was the morning of the 3d.

Q. Now, did you, on the morning of the 3d, see any one else working on the Alaska-Juneau's grade down the creek from where you were working—on this day, the 3d?

A. Working on a tunnel at Snowslide Gulch.

Q. Then, from where you were working over on the Parish or the Lotta claim, looking down the creek could you see anybody of the Alaska-Juneau Company working except this bunch that came up there and went into—     A. No.

Q. Didn't see any one?     A. No.

Q. Did you recognize any of the parties who were up there working in the creek bed down below, just below the Ebner air-compressor?

A. I saw Mr. Kinzie there.

Q. About how many people were with him, do you remember?

A. About ten or twelve; I didn't count them and I couldn't say.

Q. Do you know where the Alaska-Juneau people

(Testimony of Al. Graham.)

afterwards constructed [695—545] a dam, and I mean the dam that was in place at the time that Judge Cushman tried the case; you remember that dam, don't you, and where they constructed it?

A. Yes.

Q. On the 3d of October when they were up there, where were they working with respect to that dam—were they up the creek or down the creek from that dam? A. About 60 or 70 feet up.

Q. Did you see the first dam that they completed—the one that was in there at the time Judge Cushman tried the Basin case? A. I seen that dam.

Q. Approximately how far were they up from that dam?

A. I couldn't say; about 20 or 30 feet, probably 50 feet, above that.

Q. Were they down in the creek at that time?

A. Working below there.

Q. Did you at any time during the 3d see them working on any piece of box or piece of flume down there?

A. On that old flume on the opposite side making a box there.

Q. Did you observe as to whether or not on the 3d they tried to do anything with that box, on the 3d of October, 1910, while you were there?

A. They tried to put it in the creek there.

Q. About what time was that, Mr. Graham, that they tried to put it in the creek?

A. About two or three o'clock.

Q. Where were they trying to put it in the creek

(Testimony of Al. Graham.)

with respect to the dam that they afterwards constructed down the creek—above or below that point?

A. Above.

Q. Did they succeed in getting that in the creek in the afternoon of the 3d of October, 1910, in Gold Creek?

A. They got it in there, all right enough, but it didn't stay [696—546] there.

Q. They got a piece in in the afternoon that didn't stay there. Now, when did you quit working up there, Mr. Graham; what time in the afternoon of October 3d?

A. I worked around there until about five.

Q. Then you quit and came downtown?

A. No; I didn't come downtown at all.

Q. Where were you—up there on the work?

A. Yes.

Q. Were you up in the vicinity of this same place at eight or nine o'clock in the evening of October 3d?

A. I was up there, yes.

Q. What, if anything, were the Alaska-Juneau people doing there?

A. I don't know; I wasn't around there.

Q. Where did you go after five o'clock—did you leave that immediate vicinity?

A. I was up in the boarding-house there.

Q. When did you go back to this place where they were attempting to put in a piece of flume on the afternoon of October 3d, 1910?

A. didn't go back until the morning of the 4th.

Q. What, if anything, did you see in the creek?



(Testimony of Al. Graham.)

A. Seen a box in the creek.

Q. Where was that with respect to where they afterwards constructed the dam—I mean the first dam they put in?

A. 50 or 60 feet up the stream.

The COURT.—Do you mean that the box was 60 feet above the dam that they were constructing at the time of the Basin suit?     A. Yes.

Q. (By the COURT.) That the first box was up—

A. 50 or 60 feet from where the dam is now.

Q. (By the COURT.) I understood Judge Winn to ask you how far it was with reference to that first dam. [697—547]

A. I don't know how far they moved this dam down.

Q. (By the COURT.) You know where the first dam was—can't you tell what the relative position—

A. About 50 feet, I would say; somewhere around there.

Q. (By the COURT.) Above or below?

A. Above.

Q. (By Judge WINN.) Now, this particular piece of flume that you have testified that you saw there on the morning of the 4th, just explain in your own way, Mr. Graham, how it was placed—whether it was placed in the stream, or whether one end was placed in the stream and one end out on the bank?

A. The box was right in the stream, in the middle of the stream; it was tied in the stream.

Q. Tied in?     A. Yes, held by wire.

(Testimony of Al. Graham.)

Q. As you remember, about how much of the flume was submerged or sunk into the water?

A. About half down in the water.

Q. Did the water run in at one end out of the creek and then run out at the other end in the creek, or run out at the other end on the bank?

A. The box was right in the creek.

Q. I will ask you if, on October 4th, when you were up there in the morning, if the Alaska-Juneau people had any dam of any kind built in the creek at that place?     A. I didn't see no dam there.

Q. What else, if anything, did you see there besides this box?

A. A couple of logs to walk across on.

Q. Where were those logs with respect to where they had sunk this piece of flume into the creek?

A. The logs was below that box.

Q. You think they were below the box?

A. Yes, sir.

Q. Just two logs across the creek?     [698—548]

A. I don't know; two or three logs; enough to get across on; that's all.

Q. Now, Mr. Graham, on the 4th day of October, where were you?     A. I was all around there.

Q. Did you get any lumber or have anything to do with making any boxes or headgate on the 4th of October, 1910?     A. No; I didn't build any boxes.

Q. Did you get any lumber?

A. I got some lumber in the mill.

Q. Got some lumber out of the old Ebner mill?

A. I didn't; the men took it out.

(Testimony of Al. Graham.)

Q. Where did the men take it to?

A. To where the Ebner dam is now.

Q. Do you know what that lumber was used for?

A. Supposed to be used for a box; I didn't see them build it at all.

Q. Did you give them orders to build a box?

A. Yes.

Q. Who were the parties that build that, if you remember?

A. John Carlson and Dan Riordan are two of the men.

Q. Was Al Black working up there on the grade line at that time?     A. No.

Q. Where was he working?

A. I think he was arrested in town here.

Q. Oh, on the morning of the 4th; that is right. Now, do you remember on the 4th about there being a tent somewhere up there in the neighborhood of the Ebner Company's dam?

A. I wasn't over there on the morning of the 4th.

Q. When did you, if at any time, ever see a tent over there?

A. I was over there about the 8th or 10th, somewhere around there; I don't remember just the date.

Q. Where was that tent with reference to the grade line of the flume that was afterwards constructed? [699—549]

A. It was on the grade line.

Q. Do you know anything about how much of the grade line of the Ebner Company down the creek was

(Testimony of Al. Graham.)

constructed or cleared off, about how many feet, on October 3d?

A. No, I couldn't say; I wasn't over there October 3d and I couldn't say.

Q. You had been working over on the other side down below where the grade line was?

A. I was working on the Parish.

Q. You were over at this place on October 4th?

A. What place is that?

Q. At the place where they put in this piece of flume, where the Treadwell Company had put in the piece of flume? A. On the 4th?

Q. On the 4th of October; the Alaska-Juneau, I mean—it was on the morning of the 4th that you were there and saw this piece of flume?

A. The box in the creek?

Q. Yes. A. Yes.

Q. I wish you would explain a little in detail, Al, how that box was anchored; was it anchored to those logs across the creek, or was it anchored to something on the outside; how was it fixed?

A. I couldn't see from the top of the hill, but I could see it was tied by two ropes; I didn't go down the creek; I was 200 or 250 feet above it, but you could see the ropes on it.

Q. Did you go past that place on the 5th or 6th of October, or any time after the 4th?

A. No, I couldn't say.

Q. You don't remember how long after the 4th it was that you were down at that place?

A. I couldn't say; I was all around there, but I



(Testimony of Al. Graham.)

couldn't say the [700—550] day.

Q. You were down there, though? A. Yes.

Q. But you don't remember the date you were down there. Do you remember, Mr. Graham, of any brush, or some part of a dam, after the 3d, being constructed along where those logs were across the creek?

A. No, there wasn't no dam put in for quite a while after that.

Q. Was there any brush put in under those two logs that you saw crossing the creek?

A. No, I don't think so.

Q. You didn't see any. A. No

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Graham, you were up on the hillside on the morning of October 4th, weren't you? A. Yes.

Q. You saw Mr. Kinzie and Mr. Case there taking pictures, didn't you?

A. No; I didn't see Mr. Case up there.

Q. You saw Mr. Kinzie there, didn't you?

A. I did.

Q. You remember somebody up there taking pictures, don't you? A. No.

Q. I call your attention, Mr. Graham, to a photograph marked Plaintiff's Exhibit No. 9, and ask you to look at it and state if you aren't the same man that set off the blast that is shown in that picture as going off. A. I couldn't say.

Q. You set off some blasts there on the morning

(Testimony of Al. Graham.)

of October 4th, [701—551] did you not?

A. Yes.

Q. And that blast shown in that picture looks like one of the blasts that you set off that morning, does it not? A. I couldn't say.

Q. You are familiar with the hillside shown in that picture, exhibit No. 9, are you not, Mr. Graham?

A. With this picture, no.

Q. With the hillside shown in the picture—are you familiar with the hillside that is shown in that picture?

A. The picture don't look like a hillside at all to me.

Q. What is your answer?

A. I said no; it didn't look like it to me at all.

Q. Do you know the hillside in the neighborhood of where the Alaska-Juneau dam is now constructed—do you know where that hillside is?

A. Not on that picture; no.

Q. Do you know where it is on the ground?

A. If I was up there, yes.

Q. Do you know where Miller's Gulch is?

A. Not by that name.

Q. Do you know where the gulch is that comes down just above the Alaska-Juneau dam?

A. Above the dam?

Q. Yes. A. There is a little gulch there.

Q. Now, assuming that this is Miller's gulch, can you see Miller's gulch on that picture, exhibit No. 9?

A. It don't look like it to me.

Q. You can see it, can't you?

(Testimony of Al. Graham.)

A. It don't look like it to me.

Q. That picture, in fact, doesn't look to you like a picture of the hillside above the Alaska-Juneau dam at all, does it? [702—552]

A. On that picture it may be, but I don't think it looks like it to me at all.

Q. You think that is a picture taken of some other hillside?

A. No; I suppose that was taken down the creek, was it not? I wasn't down the creek.

Q. I will call your attention now to a picture, marked and received in evidence as Plaintiff's Exhibit No. 8, and ask you to look at that—do you see anything on there that looks like Miller's Gulch?

A. I wouldn't say if it is or not.

Q. See those two men up there?

A. No, I can't see them.

Q. Can't you see two men up there? A. No.

Q. See if you don't recognize yourself up there as one of the two men?

A. See a couple of hats, all I can see there.

Q. Can you see your own hat there, the hat you were wearing that day?

A. Couldn't say what hat I wore that day.

Q. So you don't know whether one of those hats is your hat, or not your hat? A. No.

Q. Does that picture look to you like the hillside right immediately above the Alaska-Juneau dam?

A. I couldn't say; I don't think it does; it may look something like it, too; I was never down and looked at the hillside.

(Testimony of Al. Graham.)

Q. No?      A. Not at that end.

Q. Never in the vicinity of the Alaska-Juneau dam?      A. Not at that point.

Q. You don't know how the hillside would look further up?      A. No. [703—553]

Q. That hillside looks very different to you—

A. I was looking down.

Q. Because you were looking down, is that right, Mr. Graham?      A. Yes.

Q. Things sometimes look different when you look at them from different angles?      A. Yes.

Q. You looked at that hillside at one angle and the picture was taken at another angle—that is the reason you don't recognize it?      A. I suppose so.

Q. It is from the angle up above that you were looking down on the men that were working in the canyon down below on the day that has—

A. The day of the 3d.

Q. At that time you were doing assessment work on the Lotta?      A. On the Parish.

Q. The Parish isn't up above there, is it?

A. It is below the Lotta.

Q. The Parish is further down, isn't it?

A. Yes.

Q. You were on the Lotta, weren't you?

A. I went up in the morning about ten or eleven o'clock.

Q. The day of the 3d I am speaking of.

A. I went up there about ten o'clock.

Q. Where did you go, on the Parish or the Lotta?

A. On the Lotta.



(Testimony of Al. Graham.)

Q. You were doing the assessment work?

A. I was on the morning of the 3d until 10 o'clock.

Q. Where?      A. On the Parish.

Q. What did you do after half-past ten?

A. Rolling down rocks, cutting a trail there.

Q. So that they would run down in the canyon on the men working [704—554] in the dam?

A. In the creek.

Q. I think you stated you were arrested on the 4th      A. No, I didn't.

Q. You were not arrested?      A. No, sir.

Q. Now, I will call your attention to a photograph received in evidence as Plaintiff's Exhibit No. 3, and ask you to look at that photograph and state if it doesn't show the poles concerning which you have already testified as being across the creek?

A. I couldn't say they were the same poles or not.

Q. Well, they look like the same poles, don't they, Mr. Graham?

A. I am not going to say they look like them, because I couldn't say.

Q. Well, they are in the same position that the poles were on that occasion?

A. They look to me like one pole on top of the other.

Q. The place shown on the picture, you are familiar with that ground, are you?

A. I haven't been over it for two or three years.

Q. You don't know the ground well enough now to state that you are familiar with the ground shown in that photograph?      A. No.

(Testimony of Al. Graham.)

Q. The ground shown in this photograph, exhibit No. 3, looks strange to you; is that right?

A. It doesn't look like it at all.

Q. It don't look natural? A. No.

Q. You are not familiar with the ground shown in that photograph? A. No.

Q. Nor the poles? A. No. [705—555]

Q. You don't know then, Mr. Graham, whether that is a correct picture of conditions as they existed on the morning of October 4th at that point—at the point shown in the picture? (Not answered because of objection.)

Q. Now, I will ask you, Mr. Graham, whether Plaintiff's Exhibit No. 3 that I have exhibited to you, is not a correct picture and does not show the poles, or dam, or whatever they constituted, and the logs and the conditions as they existed on the morning of the 4th of October, 1910, on the ground?

A. I said no.

Q. They don't so show, is that your answer?

A. Yes.

Q. Now, let's see—where were you on the morning—you didn't go down in the creek that morning?

A. I did not.

Q. You didn't see these things from the angle they are shown in the picture?

(Not answered because of objection.)

Q. You didn't see the poles from a viewpoint looking up-creek? A. I seen two poles in the creek.

Q. But you saw them from above? A. I did.

Q. You didn't see them from below? A. No.

(Testimony of Al. Graham.)

Q. You were not down there at all?

A. I wasn't down there, no.

Q. You did see two poles in the creek?      A. I did.

Q. Where were those two poles?

A. Across the creek.

Q. Anchored between rocks in the same manner that the poles shown in this picture are, are they not?

A. I didn't see they were anchored—laying across the creek. [706—556]

Q. The creek was pretty swift?

A. I was never in the creek.

Q. And the poles were anchored—

A. They might have been put up against a rock.

Q. Did you see any brush behind the poles?

A. I did not.

Q. Any rock on top of the brush?      A. I did not.

Q. You couldn't see that from where you were?

A. I could see any brush if it was in; I didn't see it.

Q. If there was a rock behind the poles and rocks up on the brush, was there water running over the tops of the poles?      A. No.

Q. Any water running between the poles?

A. I don't think so.

Q. Did you notice what those poles were intended for, what they were put there for?

A. I presume the idea was that they were to walk across to that rock.

Q. There was a rock in the creek the morning of

(Testimony of Al. Graham.)

the 3d?     A. Yes.

Q. This rock was right at one end of where the poles were?     A. The poles were alongside of it.

Q. Now, that rock was on the right-hand side of the creek as you go up-stream, wasn't it?

A. No, it was in the center of the creek.

Q. In the center of the creek?

A. I should judge in the center of the creek.

Q. Didn't they drill a hole and blast it out?

A. I don't know if they ever blasted that, tried to blast it.

Q. Why didn't they succeed, don't you know?

A. It didn't go off.

Q. You weren't there all the day, were you?

[707—557]

A. I didn't go up until about 10 o'clock.

Q. How long did you stay?

A. Three or half-past three, somewhere about that time.

Q. Then you went away?     A. Yes.

Q. You don't know what happened there the rest of the day?     A. I didn't go back again that day.

Q. You didn't go back again that day, and you don't know anything about what was done there the rest of the day, and while you were there they were building a box?     A. On the side of the creek.

Q. And they put it in the creek to float it down?

A. I don't remember putting any box in the creek at that time; not on the morning of the 3d.

Q. The box was still lying on the side of the creek when you left?     A. Making a box.



(Testimony of Al. Graham.)

Q. And other men were down a little bit lower, drilling in this rock?

A. Was only one man, that's all.

Q. One man was drilling, and others were posted up around the side there watching you fellows above?

A. Working up on the poles, pulling the poles down.

Q. Bringing more poles down to the dam?

A. Logs or poles, whatever they were.

Q. Big poles, and they were brought down to where the dam was afterwards built?

A. No, I didn't see them build a dam there that day.

Q. They were brought down to the point where the dam was afterwards built, sometime afterwards?

A. I suppose they were.

Q. Those are the logs and the poles you saw across the creek on the morning of the 4th? [708—558]

A. I didn't say those were the poles.

Q. There were two poles put across?

A. Two poles.

Q. You don't know whether they were the same poles or other poles? A. No.

Q. How far from the poles were you?

A. 150 or 200 feet.

Q. Up above? A. Yes.

Q. At that angle you couldn't tell whether they were the same logs or different ones? A. No.

Q. And you couldn't see just how they were fastened? A. Don't know if they were fastened.

(Testimony of Al. Graham.)

Q. And you couldn't tell anything about that from where you were—couldn't see if there was a rock against them or what there was there? A. No.

Q. You don't know if the poles you saw there on the morning of the 4th were up against a rock or just stuck in the mud, or how they were?

A. I said I didn't know.

Q. You couldn't see that from where you were?

A. Could see the logs, but couldn't see if they were tied; didn't go down to see.

Q. I now call your attention to a photograph marked Plaintiff's Exhibit No. 5, and ask you to look at it, and I call your attention to the box that is therein shown—see that box there?

A. I don't know whether this is a box or not—boards all piled up there.

Q. Do you see the remnants of what was once a box?

A. I don't know if it was ever a box or not. [709—559]

Q. Do you see those boards there broken up?

A. Yes.

Q. That is the way, Mr. Graham, that box, or whatever it was, looked on the morning of October 4th, wasn't it?

A. No, it looked worse than that; that box that was in the creek, there was nothing left of it.

Q. It looked worse than this picture? A. Yes.

Q. You don't think this is broken up as much as the box in the creek was? A. No.

Q. It was something like that?

(Testimony of Al. Graham.)

A. I think it was much smaller.

Q. But it was in the same position, anyway, as that shown in the picture?

A. Pretty hard to say, it was gone so quick.

Q. It was the same place?

A. I couldn't say it is the same place.

Q. You wouldn't then say that that picture looks like it?     A. No.

Q. That box, however, that you saw on the morning of the 4th was smashed up?     A. It was, yes.

Q. Just in the same manner as the box in the creek?     A. No, worse than that.

Q. It was broken up a little worse you think. Are you familiar with the ground that is shown in that picture, Mr. Graham?     A. I don't know.

Q. You don't know whether you know that ground shown in that picture or not?

A. I don't; I know the ground I was on.

Q. Were you on the ground that is shown in that picture?     A. I couldn't say. [710—560]

Q. Are you familiar with the ground shown in that picture?

(Not answered because of objection.)

Q. Do you know that gulch that is shown in the picture?     A. No, I can't say I do.

Q. You don't know that you do. There is nothing in that picture that looks to you as though you had ever seen it before?     A. No.

Q. Not a thing in that picture?     A. No.

Q. That looks as though you had ever seen it before?     A. No.

(Testimony of Al. Graham.)

Q. Now, I call your attention to another picture, marked exhibit No. 4, and I call your attention to the box that is shown about the center of that picture; do you see that—does that look like the box on the morning of October 4th?

A. No, that looks to be a box there, that you call a box; there was a little difference in it the morning I saw it.

Q. What is the difference between the box shown in the picture and the one you saw on the morning of October 4th?

A. Nothing to it, it was all broken to pieces.

Q. This one, you think, is not damaged quite as much as the other, is that right—but the position of the box that you saw on the morning of October 4th and the box that is shown in the picture is the same, isn't it?

A. I couldn't say anything about the picture.

Q. You couldn't say anything about the picture. Are you familiar with the ground that is shown in that picture?     A. Not in that picture, no.

Q. Did you ever see that ground before that is shown in that picture?

A. I don't know anything about the ground in that picture at all.

Q. Don't know anything about it? [711—561]

A. Not that picture, no.

Q. You are not familiar with the ground shown in that picture?     A. Not from that picture, no.

Q. You don't know that you ever saw that ground before?     A. Not from that picture, no.



(Testimony of Al. Graham.)

Q. You don't know if you ever saw that hillside before? A. Not from the picture, no.

Q. The picture isn't distinct enough for you to say that you have ever seen any of that ground before. On the morning of the 4th were you doing work on the Lotta again? A. No.

Q. Didn't you set off some blasts there on the 4th?

A. Early in the morning, yes; I was just down there a little while.

Q. Those blasts were right above this box in the creek? A. Up on top of the hill.

Q. So that the rocks were rolled down on it?

A. Yes.

Q. And that is what happened to the box?

A. Yes, sir.

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(Witness excused.) [712—562]

The defendant, to further maintain the issues on its part, introduced as a witness AL BLACK, who then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Al Black, for Defendant.**

**Direct Examination.**

(By Judge WINN.)

Q. Your name is Al Black, is it? A. Yes, sir.

Q. How long, Mr. Black, have you lived in and about Juneau? A. About 22 years.

Q. What is your business generally?

A. I followed teaming for quite a while.

(Testimony of Al. Black.)

Q. Do you know Mr. Mackey? A. I do.

Q. How long have you known him?

A. I have known him for 15 or 16 years, I guess.

Q. You know generally where the Ebner Gold Mining Company's property is up in the basin, don't you, Mr. Black? A. Yes.

Q. Did you ever do any work up there for Mr. Mackey in the year of 1910? A. I did.

Q. Who was it that first engaged you to go up there to go to work? A. George Bent.

Q. You remember then when Mr. Bent and his party were here in the summer of 1910, don't you?

A. Yes.

Q. You remember that date that you went up there—about the date [713—563] you went up there, Al?

A. I went up on the 11th day of August; I think it was the day after they had an election here that Orr and Wickersham ran for delegate; it was the next day.

Q. Of August?

A. Of August; I think it was the 11th.

Q. What did you go up there to do then?

A. Went up there to work on that grade.

Q. The flume line grade?

A. The flume line grade.

Q. You worked up there then from the 11th—about the 11th of August, 1910, until what date?

A. I worked up there until the 3d of October, and then I worked afterwards; on the 3d I was arrested, and then I worked after the trial was over up until January.

(Testimony of Al. Black.)

Q. 1911?      A. 1911.

Q. Then your work extended over the period, in and upon this Ebner property, from September 11th, 1910 up until about January, 1911?

A. August 11th, 1910.

Q. I mean August 11th; from about August 11th, 1910, to sometime in January, 1911, you were working in and around on the Ebner property up in the Basin?      A. Yes.

Q. Now, you started to tell a while ago, I think, what was the first work you did when you went up on the grade—where did you commence work with reference to the Ebner Company's dam?

A. Right at the dam.

Q. You had been by that dam up there and had known of it being there several years prior to 1910, hadn't you?      A. Yes.

Q. What was the first work in and about that dam that you did, [714—564] in a general way?

A. Well, I went there and took an axe and cut some brush, then I graded along there; then I cut the brush out on part of the right of way for the flume over pretty near to Cape Horn.

Q. Did you see Mr. Hill or Mr. Wettrick up there at any time during this period that you were cutting this brush out?      A. Yes.

Q. What were they doing?

A. They were surveying.

Q. Under whose directions did you clear out this right of way, as you stated, from the old Ebner dam down the creek towards Shady Bend or Cape Horn?

(Testimony of Al. Black.)

A. Mackay came up there and he told me where to go to work and he said that Hill and Wettrick, if I wanted any more information to go to them.

Q. And you did go to them, did you?

A. Yes.

Q. Did they instruct you as to where to do this cleaning out for the grade?     A. Yes, sir.

Q. They told you where to do it?     A. Yes.

Q. When did anybody go up there to work with you, do you remember about the time?

A. It was along in September, along about the middle of September; somewhere along in there.

Q. Mr. Mackay came up then, did he?

A. He came up and the next day he sent two men up there, Middleton and a fellow named Radel.

Q. Were there more men put on then?

A. Yes, a day or so afterwards there was some more men put on; I kept putting them on as fast as I could get them for quite a while. [715—565]

Q. You were acting as a foreman?     A. Yes, sir.

Q. Under whose instructions were you employing these men to work up there?

A. Under Mackay's.

Q. Where were you working up until sometime in the early part of September, Al—where were you working?

A. On the grade except there were two men down in the tunnel; they were doing assessment work.

Q. Do you know what the mining claim is called that they were doing the assessment work on?

A. It was the Parish.



(Testimony of Al. Black.)

Q. You know approximately where the lower side line of the Lotta claim is on the ground?

A. Know what was showed me.

Q. Ever see any stakes along on that line?

A. I did.

Q. Where did you see them?

A. There was one right there on a bridge.

Q. Up on the Basin road?

A. On the Basin road.

Q. Did you ever see any stake there near the little cabin down near the creek?     A. Yes.

Q. When did you see that stake?

A. It was along in September some time; I went over with Wettrick and he showed me the stake.

Q. I will ask you if you were ever up on this lower side line with anyone else prior to 1910—did you ever group there with Mr. Ebner?

A. Yes, I was up there one time—I wasn't up with them, I took them up in a team; there was Mr. Ebner, Tom Lyons, and I don't know, they had some women folks along but I don't know who they were; Mrs. Ebner, I think, was along, and we stopped [716—566] there and he showed Tom Lyons the stake—he showed him that stake and said the other stake of the corner was on the hill, and he said the other stake was over across by the cabin.

The COURT.—Judge Winn, what has this got to do with it?

Judge WINN.—To show how long he has been acquainted with the Lotta claim—shows the boundaries and is corroborative of our theory of the trespass.

(Testimony of Al. Black.)

The COURT.—Proceed.

Q. Now, you say that in 1910 you kept up work on this grade of the high-line flume of the Ebner Company, up until what date did you cross the creek and do any work over there?

A. I went across there, it may have been the last of September; I had some men working along there the 1st of October and up until the 3d of October.

Q. Where were you working on the 3d of October, 1910?

A. Well, I was practically all over there—down on the Lotta claim part of the time, part of the time I was up at the blacksmith-shop, and some of the time I was over on the flume grade; I had men working on all those places there.

Q. Were you working up there at any time on the 3d of October, 1910, when Mr. Kinzie and some people came up and went in the bed of Gold Creek to do some work?

A. I was up there on the works that day, yes.

Q. Where were you with respect to where they commenced their work?

A. I ain't sure; when they got up there, I was over on the high-line flume.

Q. You don't know just where you were working when Kinzie and his party first came up there on October 3d?     A. No.

Q. You were working on the high-line flume part of October 3d, do you think?

A. Yes, the men were all over there and I was looking after them.

(Testimony of Al. Black.)

Q. You were still acting somewhat as a foreman?  
[717—567] A. On October 3d, yes.

Q. Do you remember about what time of the day of October 3d, 1910, you saw Mr. Kinzie's party down in the creek—was it forenoon, afternoon, or evening?

A. When I went up to work in the morning I saw some work done at the tunnel.

Q. What tunnel do you mean?

A. The tunnel they drove, the water tunnel there.

Q. You mean the tunnel that lies just above where they have put the flume through a tunnel?

A. Yes.

Q. What I am trying to get at, Al, is to find out what time you saw them up anywhere on the Lotto Lode Claim or near there?

A. It was along in the forenoon sometime; one of the men, the watchman, I think it was, came over and told me they were there, and I took some men and went down and put them to work above them in order to keep them from putting their dam in.

Q. Now, when you were over there on that day, when you put these men to work up above where Kinzie and his people were working, where were the Kinzie people working—down in the bed of the creek on the same side, or where?

A. They were down in the bed of the creek, and some of the men were on the other side of the creek.

Q. Some were on the left-hand side of the creek as you go up the creek? A. Yes.















